

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

FILED
CLERK'S OFFICE
2012 DEC 14 AM 10:55

DIANNE BRANNER, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

STATE OF GEORGIA

:

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v.

:

INDICTMENT: 11-CR-67684

:

STEPHEN MCDANIEL

:

MEMORANDUM REGARDING MOTIONS

Counsel for Stephen McDaniel – Floyd M. Buford, Jr., and Franklin J. Hogue – file this Memorandum Regarding Motions as an aid to the Court and the District Attorney.

Organization of Motions

We have created six categories of motions. The first category of motions have all been filed and heard previously (Motion for Bond, Supplements to Motion for Bond, etc.). The remaining five categories each include a number of motions, listed in a separate index to motions, and numbered so that additional motions in each category may be added later. Thus, for example, category 2, "Investigative Procedures: Searches, Statements, Arrest," includes 14 motions, numbered 2.1, 2.2, 2.3, etc. We expect to add motions along the way, including several death-penalty-specific ones that are still being written as of this first wave of motions,

so a new motion will be numbered to follow the last-numbered motion in that category. If, for example, we file an additional motion under "Investigative Procedures," it will be numbered "2.15" and may be added to a digital file or notebook where it would naturally belong, right after motion "2.14."

Acknowledgment

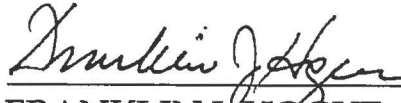
Counsel wish to recognize the generosity of Andrea Lyon, Professor of Law, Associate Dean for Clinical Programs, and Director of the Center for Justice in Capital Cases at DePaul University College of Law in Chicago, Illinois, for donating her time and her students in the clinic to important motions research, drafting, organizing, evaluating, and other legal tasks related to Stephen McDaniel's case. These dedicated folks gave generously and energetically of their time and prodigious talent in the service of this one person and his two lawyers. The Clinic's students, staff, and investigator, under the direction of Andrea Lyon, a hero among death penalty defense lawyers, receive the deep gratitude of Stephen and his lawyers. In addition to Andrea, those who assisted us in the fall 2012 include Leah Farmer, Sami Silverstein, Palak Shah, Kelly Craig, Kelly Parry, Alexandra Hochhauser, Eliot

Salsar, Rachel Johnson, and John Conroy. Travis Griffin, associate at Hogue & Hogue, also provided valuable assistance in the research and writing of several motions.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
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December 14, 2012.


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[2.1]

MOTION TO PROHIBIT ALL EVIDENCE
OF ANY KIND REGARDING
"HUMAN REMAINS DETECTION" DOGS
("HARPER" CHALLENGE)

STEPHEN MCDANIEL, through counsel, requests that this Court exclude all evidence of any kind regarding human remains detection dogs (cadaver dogs) in this case.¹ Such evidence fails to meet the test of admissibility set out in *Harper v. State*, 249 Ga. 519, 292 S.E.2d 389 (1982), because use of cadaver dogs has not "reached a scientific stage of verifiable certainty." *Id.* Granting this motion will help secure Mr. McDaniel's rights guaranteed by the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution, Article I, Section I, Paragraphs I, XI, XVI, and XVII of the Constitution of the State of Georgia, and

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¹ Though "human remains detection dogs" is the term used throughout the police reports in this case to describe the two dogs utilized by handler Tracy Sergeant, we will call them cadaver dogs here because (a) it's shorter, (b) it's familiar, and (c) it adequately describes the type of dogs at issue.

relevant case law to be cited below. In support of this motion, the defendant offers the following.

Introduction

Stephen McDaniel has reason to believe that the State may attempt to introduce evidence at trial relating to searches conducted of McDaniel's apartment complex by so-called "human remains detection dogs," more commonly known as "cadaver dogs," including "alerts" that these dogs allegedly exhibited at various locations in and around the apartment complex. The presumed purpose for which the State may seek to inject this evidence into the case would be to raise the circumstantial inference that Stephen McDaniel killed and dismembered Lauren Giddings in one or more of the apartments at 1058 Georgia Avenue. Such cadaver dog evidence, however, fails to meet the test for admissible expert opinion testimony because it involves a procedure or technique that has not reached a scientific stage of verifiable certainty, as required by Georgia law, and because the danger of unfair prejudice to the defendant far outweighs the alleged probative value of such evidence.

Factual Background

At approximately 12:52 a.m. on June 30, 2011, while at the Barrister's Hall apartment complex at 1058 Georgia Avenue in Macon, Georgia, Ashley Morehouse reported to Macon Police Officer David Descoteaux that her friend, Lauren Giddings, was missing. (19)² Sgt. Doug Copeland arrived around 1:00 a.m., conducted a brief investigation along with Descoteaux, then contacted Detective Shaun Bridger, who advised Copeland and Descoteaux to write a report, send it to the detective bureau, who would follow up in the morning, and to leave the scene. (754)

Later that morning, at 8:40 a.m., Assistant District Attorney Gary Wood met Detective David Patterson on Patterson's way into his office to report to him that Lauren Giddings was missing. (23) Patterson requested assistance from the Macon Crime Lab and went to 1058 Georgia Avenue, arriving around 9:00 a.m. to begin his investigation. (23) About 40 minutes later, around 9:40 a.m., Patterson and other officers discovered a female torso in a trashcan on the east side of the

² While little use to the Court, or to the State, parentheticals containing numbers, such as here, refer defense counsel to the page number in the discovery as it was received by the State, unnumbered, but after which the defense Bates-stamped it for quick and easy reference.

apartment complex, near the apartments facing Georgia Avenue. (118) About five hours later, Tracy Sergeant arrived at the apartment complex with two dogs, Cinco and Chance. (118) By that time, police had searched various places in and around the apartments, a number of people had been interviewed, and evidence had been collected, most important of which was a female torso found in a trashcan on the apartment complex property. (118)

At 2:15 p.m., Ms. Sergeant began to walk her dogs to various places in and around the apartment complex. (118, 107) She reports that they alerted eight times, twice in Lauren Giddings's apartment (outside the front door and in the bathroom), twice in a vacant apartment below Lauren's apartment (in the bathroom and the living room), twice in Stephen McDaniel's apartment (in the bathroom and in the bedroom), and twice in the apartment complex laundry room (outside the front door and inside the laundry room). (108) None of these putative dog alerts was captured on video.

Ms. Sergeant took her dogs to several other places at the apartment complex, but, according to her, they did not alert at any of them. (109) The places where the dogs did not alert include the front door of each

apartment in the complex (other than Lauren's and Stephen's front doors), the perimeter of the complex – which would have included the trashcan where a torso had been discovered and removed only a few hours earlier – as well as the property next to the apartments and an alley behind the apartments. (109).³

Argument

The presumed purpose for which the State may seek to introduce testimony by Tracy Sergeant that her two dogs alerted at eight different places at 1058 Georgia Avenue is to create an inference that Stephen McDaniel killed or dismembered Lauren Giddings, or did both, in or near those places, or that human remains of Lauren's were once located there, somehow in connection with her murder and dismemberment by Stephen, wherever those acts may have occurred. Since dogs don't speak English,⁴ they cannot testify firsthand to their prodigious olfactory abilities and discoveries of human remains. And since a layperson

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³ Ms. Sergeant also took her dogs to the dumpster across the street from the apartments, used by Mercer Law School, and to the Macon landfill. This motion applies to these places as well, though no relevant alerts occurred at those places. (109-110)

⁴ Even Lassie needed English-speaking humans to translate her various barks into English concerning Timmy's falling into the well, yet again, and other mishaps and calamities of his.
http://www.lassie.com/lassie_star.html

cannot draw an inference solely from an eyewitness's description of non-linguistic dog behavior at a given place and time to mean that human remains were once present in that place, it follows that such an interpretation of dog behavior requires an expert's opinion concerning it. "[I]f the conclusion at issue could be drawn by anyone based on observation, there would be no need for expert testimony." *Carr v. State*, 267 Ga. 701, 703, 482 S.E.2d 314 (1997). "Expert opinion testimony . . . is admissible where the conclusion of the expert is one which jurors would not ordinarily be able to draw for themselves; i.e., the conclusion is beyond the ken of the average layman." *Smith v. State*, 247 Ga. 612, 619, 277 S.E.2d 678, 683 (1981).

In order to create such an inference about the meaning of dog behavior in this case, the State will have to introduce evidence that establishes that (1) a dog can smell human remains, (2) that a dog can be trained to react in a predictable way when it smells human remains, (3) that the specific dog at issue can smell human remains, (4) that the specific dog at issue has undergone reliable training to react in a predictable way when it smells human remains, (5) that the person handling the dog knows how to handle it while letting it sniff for human

remains without producing false alerts, (6) that the person handling the dog knows how to interpret its behavior if and when it smells human remains, (7) that the techniques involved in training and handling cadaver dogs falls within the domain of a "science," and, finally, and most importantly, (8) that the technique involved in human remains detection by dogs has "reached a scientific stage of verifiable certainty." *Harper v. State*, 249 Ga. 519, 525, 292 S.E.2d 389 (1982). Only then can the State elicit a witness's description of dog behavior at 1058 Georgia Avenue on June 30, 2011, and an accompanying expert's opinion about what that behavior means.

This motion raises a challenge to the admissibility of evidence, not just its weight, so the trial court serves as a gatekeeper to determine whether any talk of cadaver dog alerts should be presented to a jury at all. *Whatley v. State*, 270 Ga. 296, 509 S.E.2d 45 (1998). The jury has no role in this preliminary matter and the trial court can hear any evidence or consider any information that will aid in its decision. *Harper* at 525. No appellate case exists in Georgia in which a witness was allowed to testify to anything other than that a cadaver dog found a body, which neither dog found in this case. Indeed, only one reported opinion in a Georgia

criminal case involves a cadaver dog at all, and there, unlike here, the dog found the body of the murder victim and, there, unlike here, no opinion testimony regarding cadaver dogs was required, since the dog, like a hunter, a hiker, or a hapless wanderer, may just as well have found the body without regard to olfactory skills or training. *Hester v. State*, 272 Ga. 197, 528 S.E.2d 501 (2000). More importantly, no inferences were required from dog behavior to what it means; the dog found the body. Finding a body is very different from dog behavior, translated by a handler as we have here, that leads to the inference that the body, or parts of it, had been previously located in various places that can then be connected to the accused person, all in an effort to raise the further inference that he killed her or dismembered her in or near those places where the dogs alerted.

Judicial notice, therefore, that cadaver dog techniques are scientifically sound and their consequent translation into courtroom testimony is out of the question, since the admissibility of this sort of evidence has never occurred in Georgia. *See* O.C.G.A. § 24-2-201(b)(1) (effective January 1, 2013). Thus, if the State elects to defend the admissibility of dog translation testimony with regard to these matters, it

will first need to establish that cadaver dog techniques fall within the domain of "science." The defense leaves that prodigious task to the State to attempt at an evidentiary hearing, if it chooses to undertake the effort, and need not brief this Court now on the definition and limits of science or the "scientific method." If the State goes down this road at an evidentiary hearing, the defense will be prepared to test the State's evidence at that time, if it produces any, whether cadaver dog techniques have undergone the rigors customarily used within the modern scientific community, imbued as that community is with skeptical attacks on hypotheses in an effort to test them to determine if they can survive to become "knowledge." Cadaver dog testimony, interpreted by the human handler, may turn out to fall somewhere between astrology and the ancient lie-detector test involving pulling on a donkey's tail.⁵

In an instructive case, the Georgia Supreme Court reversed the murder conviction of Weldon Wayne Carr, who was accused of setting

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⁵ The priests in ancient India devised a test to determine who among several suspects was the culprit by sending them one by one into a dark tent where stood a lone donkey. They were told to pull the donkey's tail; it would bray if the tail-puller was the guilty one and remain silent otherwise. What the suspects didn't know is that the priests had covered the donkey's tail in "lamp black," soot, so that whoever pulled the tail would emerge from the tent with soot-covered hands. It didn't matter to the priests whether the donkey brayed or not, but the guilty one, thinking that a silent donkey meant his innocence, would remain in the tent a few minutes with the donkey, only to emerge with clean hands because he would avoid touching the donkey's tail so that it wouldn't bray. The priests would then have their guilty man.

fire to his house, disabling his wife, then jumping from a window to save himself. *Carr v. State*, 267 Ga. 701, 482 S.E.2d 314 (1997). The Court reversed the conviction, in part, because the trial court allowed the admission of testimony from a dog handler that a dog trained to detect the presence of hydrocarbons at a burn site alerted to their presence in Carr's house, supporting the opinion that he had used an accelerant to start the fatal fire. The Court first determined that a dog handler's testimony about the meaning of a dog's behavior constitutes expert opinion testimony and, therefore, is subject to the *Harper* test. *Id.* at 703. The trial court had conducted a pre-trial *Harper* hearing, ruling that the evidence of the dog's abilities met the conditions of *Harper* and, thus, was admissible. The Supreme Court disagreed, however, holding that:

While the use of trained dogs can be a valuable part of investigative procedures and can provide important elements of probable cause to search (*Bothwell v. State*, 250 Ga. 573(7), 300 S.E.2d 126 (1983); *Carter v. State*, 222 Ga.App. 345(1), 474 S.E.2d 240 (1996)), dog alerts to accelerants have not been shown, neither at the trial of this case nor in any Georgia appellate decision, to have the scientific reliability necessary to permit their use as substantive evidence of the presence of accelerants. The trial court's ruling to the contrary was error. The State argues that the admission of the evidence, if error, was harmless in light of other evidence of the presence of an accelerant. However, there was no other direct evidence of the presence of an accelerant, and thus, no direct evidence of arson. Notwithstanding the trial court's instruction that

the evidence of the dog alert must be considered along with other evidence, we conclude that the potential impact of the evidence admitted was too great for us to conclude that no harm to Carr's right to a fair trial flowed from it. The erroneous admission of that evidence requires a new trial.

Carr at 704.

Replace "accelerant" with "human remains" and *Carr* becomes virtually identical to this case.⁶

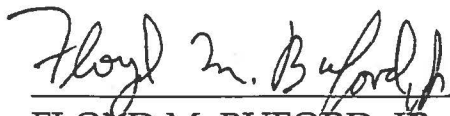
Conclusion

This motion challenges the admissibility of expert opinion testimony concerning the behavior of two cadaver dogs, presumably to be offered by their handler, Tracy Sergeant, and what that behavior means, on the basis that cadaver dog behavior and translation is not scientific at all, or, if it conforms to some modest measure of the scientific method, it is novel and has not reached the "scientific stage of verifiable certainty" sufficient to be admitted into evidence in this case.

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⁶ This case is noteworthy, as well, because of the Supreme Court's conclusion that the prosecutor's injection of herself into the investigation of the case, as well as her trial antics, would alone have required a reversal had the Court not already reversed because of the inadmissible dog testimony. Some of that conduct involved the prosecutor's illegal acquisition of a court order, tantamount to a search warrant, to enter Carr's home accompanied by an arson expert and to enter it again, with no order at all, accompanied by a CNN film crew. Regarding the prosecuting attorney, the Court wrote: "We conclude that the conduct of the prosecuting attorney in this case demonstrated her disregard of the notions of due process and fairness, and was inexcusable."

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



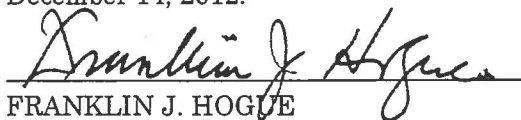
FRANKLIN J. HOGUE
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CERTIFICATE OF SERVICE

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STEPHEN MCDANIEL

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[2.2]

MOTION TO EXCLUDE
ALL ALLUSION TO
STEPHEN MCDANIEL'S INVOCATION OF
HIS FIFTH AMENDMENT RIGHTS TO SILENCE AND COUNSEL

STEPHEN MCDANIEL, through counsel, requests that this Court exclude all allusions to his invocation of his Fifth Amendment rights, pursuant to the United States Constitution, to silence and the assistance of counsel. He make this motion pursuant to the Fifth and Fourteenth Amendments to the U.S. Constitution, Article I, Section I, Paragraphs I and XVI of the Constitution of the State of Georgia, and case law to be cited below. In support of this motion, Mr. McDaniel offers the following:

Factual Background

At about 5:00 a.m. on July 1, 2011, Lt. Carl Fletcher read to Stephen McDaniel the standard *Miranda* warnings. *Miranda v. Arizona*, 384 U.S. 436, 471, 86 S. Ct. 1602, 1626, 16 L. Ed. 2d 694, 722 (1966). Stephen refused to sign the form, which signature would have indicated that he understood his rights and agreed to waive them. Instead, Stephen requested an attorney. (43) This occurred after Stephen had been under constant police observation or custody for nearly 20 hours, including having been questioned off and on by various police officers and others for much of that time, further including continuous interrogation at the detective bureau for the previous six hours, from 11:00 p.m. on June 30, 2011, to 5:00 a.m. when Fletcher read Stephen his *Miranda* warnings.

Argument

One's exercise of a constitutional right, especially the right to remain silent and the right to the assistance of counsel, may never be used against a defendant at trial. *See Taylor v. State*, 272 Ga. 559, 559, 561(2)(d), 532 S.E.2d 395 (2000); *Dyer v. State*, 287 Ga. 137, 142, 695 S.E.2d 15, 20 (2010); *Griffin v. California*, 380 U.S. 609, 615, 85 S. Ct. 1229, 1233, 14

L. Ed. 2d 106, 110 (1965); *Doyle v. Ohio*, 426 U.S. 610, 619, 96 St. Ct. 2240, 2244, 49 L. Ed. 2d 91, 98 (1976).

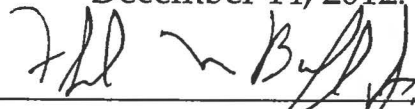
While it is not always the case that the injection into a trial by a State's witness that a defendant invoked his right to silence must result in a mistrial, this deference to judicial discretion arises in cases in which a witness brings it up "during a narrative on the part of the authorities of a course of events" and "apparently was not intended to, nor did it have the effect of, being probative on the guilt or innocence of the defendant." *Taylor v. State* at 561(2)(d). "Indeed, to warrant a reversal of a defendant's conviction, the evidence of the election to remain silent must 'point directly at the substance of the defendant's defense or otherwise substantially prejudice the defendant in the eyes of the jury.'" *Whitaker v. State*, 283 Ga. 521, 524, 661 S.E.2d 557 (2008), *quoting Taylor*.

In Stephen's murder trial, the fact that he invoked his right to remain silent in connection with police interrogation about unrelated burglaries has nothing to do with a "course of events" that is relevant to this case. It cannot possibly assist a jury in reaching a verdict that "speaks the truth" regarding the State's allegation that Stephen committed murder. The effect of any such testimony will be substantially

prejudicial, in all likelihood, especially since many people, jurors among them, may have an insufficient appreciation for this fundamental constitutional right and incorrectly presume that a defendant may be hiding an incriminating truth when he exercises it.

Thus, by this motion, the defense requests a ruling from the Court prohibiting any allusion by the State to Stephen's refusal to waive his rights to silence and counsel when Lt. Fletcher asked him if he understood them and wished to waive these rights while interrogating him about a couple of alleged burglaries.

December 14, 2012.



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STEPHEN MCDANIEL

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[2.3]

MOTION TO SUPPRESS
ILLEGALLY-OBTAINED EVIDENCE OF TWO SCRATCHES
ON STEPHEN MCDANIEL'S PERSON

STEPHEN MCDANIEL, through counsel, requests that this Court exclude any evidence related to the observation and collection by means of video, audio, or photographs of two scratches on Stephen McDaniel's torso because the acquisition of any such purported evidence violated Mr. McDaniel's expectation of privacy, protected by the United States Constitution, Fourth Amendment, applied to the states through the Fourteenth Amendment, and the Georgia Constitution, Article I, Section I, Paragraph XIII. In addition, Mr. McDaniel makes this motion pursuant to O.C.G.A. § 17-5-30. The defense requests a hearing on this motion, but gives the Court this outline of some of the expected facts to be elicited through witnesses and documents and, thereby, helps frame the issues

for the hearing by putting the State on notice. A more detailed brief, including argument and applicable law, will follow the hearing.

Factual Background

The police investigation into the fate of Lauren Giddings began around 9:00 a.m. on June 30, 2011. (19) Police encountered Stephen McDaniel soon after they arrived at the apartment complex at 1058 Georgia Avenue, when Sgt. Chapman knocked on Stephen's door and began speaking to him. (25) Detective David Patterson placed Stephen into his police car a few minutes later, where he interviewed him for the first time. (26) Not long after that, around 9:40 a.m., Patterson and other officers discovered what they later would learn was Lauren Giddings's torso in a trashcan at the apartments. (27)

After this discovery, Patterson asked two of Lauren's friends, Ashley Morehouse and Garon Muller, to meet him at the detective bureau on First Street in Macon so that he could interview them. (27) He told Stephen to ride there with Sgt. Roney, which Stephen did. (27)

After interviewing Ashley Morehouse, Patterson then took a statement from Stephen. (29) During this interview, Patterson was

interrupted when fellow officers notified him that other friends of Lauren's had arrived at the detective bureau. (30) Patterson left Stephen in the interview room around 11:50 a.m. to go interview Alex Zachos, Robert Adamson, and Garon Muller. (30) Lt. Fletcher, and others, continued to interview Stephen while Patterson conducted these three other interviews. (32)

Finally, Lt. Fletcher interrupted Patterson's interview of Garon Muller to tell him that Stephen was ready to be taken back home. (32) Instead of complying with Stephen's request, Patterson returned to the interview room, where he had told Stephen to remain, and resumed his interview of him. (32) Near the end of this third interview of Stephen by Patterson that day, Patterson ordered Stephen to stand up and then asked Stephen to lift his shirt so that Patterson could look for marks on his body. (34) Stephen complied; Patterson "noticed that he had two red scratches on the right side of his abdomen," which appeared to Patterson to be fingernail marks. (34) Patterson then asked Stephen about them; Stephen said he did not know how he got them and did not remember when he got them. (34)

At this point, around 1:40 p.m., June 30, 2011, Patterson took Stephen back to his apartment, accompanied by District Attorney Investigator Jim McDonald, Assistant District Attorney Sandra Matson, and Assistant District Attorney Elizabeth Bobbitt. (34) Patterson and McDonald then walked through Stephen's apartment, accompanied by Stephen, ostensibly to look for Lauren. (34) After this search, Stephen was allowed to leave his apartment. (34)

A few minutes later, Stephen learned during an interview with local media that police had found a torso in a trashcan on apartment property. (34) When he returned to his apartment, shaken by this news, Patterson asked him to sign a form giving police consent to search his apartment. (34) Stephen did not respond and did not sign the consent form. (35) He was placed in the Macon Police Department "Mobile Command Center," a large truck that was parked at the apartment complex. (35) Stephen remained there for several hours while various police officers came and went, along with the same two Assistants District Attorney, Sandra Matson and Elizabeth Bobbitt. Stephen was never outside police presence again that day. At all times there was somebody positioned between Stephen and the door of the enclosed

panel truck. Patterson left the apartments to return to the detective bureau to conduct other interviews (David Vandiver and Joseph Karins). (35)

When Patterson returned to 1058 Georgia Avenue, cadaver dog handler Tracy Sergeant and her two dogs were on the premises searching various places. (38) Based upon purported alerts by these dogs in Stephen's apartment and elsewhere, Patterson obtained a search warrant from Macon Circuit Superior Court Judge Edgar W. Ennis, Jr., at 8:42 p.m. (38) Stephen was still in the mobile command center, still under the watchful eye of law enforcement. Patterson handed the search warrant for Stephen's apartment to Sgt. Steve Gatlin of the Macon Crime Lab, who, along with other officers, began to search it. (38) Patterson then returned to the detective bureau around 10:30 p.m. to interview Sterling Waite, a friend of Lauren's. (39)

Around 10:45 p.m., Patterson finished that interview and returned to the apartments. (39) Stephen was still in the mobile command center. (39) Patterson put Stephen into his police car and took him back to the detective bureau for Patterson's fourth interview of him, which began about 11:00 p.m. on June 30, 2011. (39) Patterson interviewed Stephen for

some time, then left the interview room to meet Lauren's father, who had just arrived from Maryland. (41) Sgt. Chapman took over the interview of Stephen. (41)

Patterson returned to the interview of Stephen after his meeting with Mr. Giddings, then left again briefly while Sgt. Chapman continued asking Stephen questions. (41) Around 1:00 a.m. on July 1, 2011, Patterson then walked Stephen to his office, called Stephen's mother, Glenda McDaniel, and allowed Stephen to talk to her for a few minutes. (42) Lt. Carl Fletcher then walked into Patterson's office and he began to ask Stephen questions. (42) Detective Stokes was there as well. (42)

Patterson then left Stephen with Fletcher and Stokes while he returned to Judge Ennis's home to acquire his signature on another search warrant for Stephen's apartment, as well as search warrants for Stephen's car and his body, to include DNA collection, hair samples, fingerprints, fingernails, and full body photographs. (42) Judge Ennis signed these warrants on July 1, 2011, at 1:50 a.m. (42) Patterson took them to Stephen's apartment, gave them to Sgt. Gatlin, then he went back to the detective bureau, where Stephen was still being questioned by Fletcher and Stokes. (42)

Upon his arrival, Patterson learned that Fletcher had gotten a confession from Stephen that he had entered two different apartments at 1058 Georgia Avenue between December 26, 2008, and January 31, 2009, and had taken a condom from each of those apartments. (43, 492) It was now 5:00 a.m. on July 1, 2011. (492) At this point, after having never been out of police observation or custody for nearly 20 hours, and having been questioned off and on by various police officers and others for much of that time, including continuous interrogation at the detective bureau for the previous six hours, Lt. Fletcher read Stephen his *Miranda* warnings. (43) He then arrested him for burglary. Sgt. Gatlin arrived at the detective bureau from his search of Stephen's apartment, at which time he photographed Stephen's body and took DNA, hair, and fingernail clippings. (43)

Argument

From the United States Supreme Court comes this admonition to vigilance in protecting our constitutional rights:

It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule of constitutional provisions for the

security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizens, and against stealthy encroachments thereon.

Boyd v. United States, 116 U.S. 616, 635, 6 S.Ct. 524, 29 L.Ed. 746 (1886).

One of those fundamental constitutional rights is embodied in the Fourth Amendment's guarantee of our security from government intrusion into places that we expect to remain private.¹ One's body is such a place. In evaluating the legality of Patterson's search of Stephen's person on June 30, 2011, about 1:30 p.m., therefore, the first matter to dispense with is whether it was a "search." We expect the State to concede this point and for the Court to find it to be a search in fact and in law, thereby triggering Fourth Amendment protections.

Since Patterson's request to search Stephen's person for evidence of a crime triggers the Fourth Amendment, the first thing to note about it is that it was a warrantless search. The Fourth Amendment provides as follows:

¹ "Fourth Amendment" is used here for brevity, but all of these arguments turn on the application of the Fourth Amendment to the states through the Fourteenth Amendment, as well as similar protections provided to Stephen through the Georgia Constitution and state law.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

A search is unreasonable, therefore, unless executed upon a warrant supported by probable cause, based upon the sworn testimony of the law enforcement officer seeking to search a place, particularly described, including one's "person," for specific things he or she expects to find there that themselves constitute evidence of a crime. Patterson failed to seek or acquire a warrant to search Stephen's "person" until twelve hours after he'd already searched it. Thus, in the first analysis, the search at the detective bureau on June 30, 2011, at about 1:30 p.m. was, by definition, an "unreasonable" search.

Not all warrantless searches turn out to be unreasonable, however. But to turn a warrantless search from "unreasonable" to reasonable, the burden is on the State to show the Court that some exception to the warrant requirement exists. O.C.G.A. § 17-5-30. The law has acknowledged a number of exigencies that arise in police work that justify a warrantless search, but all of them circle around a cluster of

situations where evidence may be destroyed or hidden if police fail to act quickly without first seeking out a judge to sign a warrant. The automobile exception to the warrant requirement is the most common exigent circumstance in today's world.

But when an exigency exists, police must still possess probable cause—the very quantum of evidence that would persuade a judge to sign a warrant had a judge been present on the scene at the time the officer desired to search a place. No exigency existed in this case. At 1:30 p.m. on June 30, 2011—a little less than four hours after having discovered a female torso near a missing woman's apartment—Patterson still did not possess sufficient facts to support a finding of probable cause to believe that Stephen's person would contain evidence of murder, the very crime that Patterson was investigating. No judge would have signed a warrant at that point to allow a search of Stephen's person.

But, police officers may ask a person for permission to search a private place even when they do not possess probable cause to believe that evidence of a crime may exist in that place and, thus, could not have acquired a warrant from a detached and neutral judge. Thus, to further

focus the issue, Patterson's search of Stephen's person was, in that moment, a warrantless search without exigent circumstances and unsupported by probable cause to believe that evidence of the crime of murder would be found there.

So, in a scenario where police ask a person to allow them to search a place, any "consent" given by the person must have been freely and voluntarily given, that is, permission must flow from the person's unfettered choice to allow the police to search the private place. If the "consent" flows from coercion or duress, express or implied, then it does not constitute consent at all, even if words and actions appear to have given permission for the search. That is precisely the situation here. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).

In order for the trial court to assess whether Stephen gave consent at all, freely and voluntarily, the court will have to conduct a hearing in order to gather the totality of the circumstances of the search. The burden, again, will remain on the State to persuade the court that Patterson had not placed Stephen under duress to get him to "consent." *Bumper v. North Carolina*, 391 U.S. 543 (1968); *Clare v. State*, 135 Ga.App.

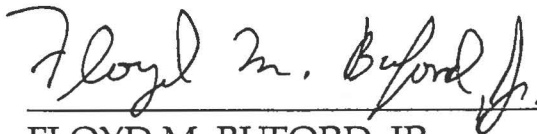
281 (1975). In a related motion that requests suppression of the warrantless searches of Stephen's apartment, first by Patterson and McDonald, then, not long after, by Tracy Sergeant and her cadaver dogs, these same circumstances will show that Patterson began requesting consent to search Stephen's apartment a couple of hours before he searched his person. In each of those prior instances, Stephen denied permission to search his apartment, but Patterson persisted, continuing to repeat his request, even resorting to peer pressure ("Everybody else is letting us search their apartments but you") and the suggestion that Stephen was lying when he said he wanted to help find Lauren but would not let law enforcement enter his apartment.

When Patterson was finished interrogating Stephen this second time at the detective bureau, he entered the room, ordered Stephen to stand up, then told him to lift his shirt to show his torso. The video tape will reveal that Patterson added the words, "if you don't mind" to his request, believing, perhaps, that this somehow removed all of the duress and coercive elements, but, in the totality of the circumstances, Stephen's shirt-lifting was not voluntary and Patterson's search, therefore, violated

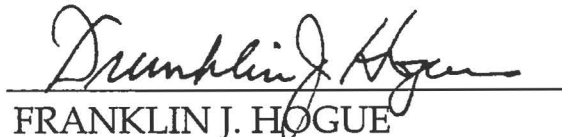
Stephen's expectation of privacy, protected by the United States and Georgia Constitutions.

Thus, the defendant moves this court to exclude from evidence in this case any allusion to scratches on Stephen's torso, purportedly observed by Patterson at the detective bureau on June 30, 2011, around 1:30 p.m.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.


FRANKLIN J. HOGUE

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IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

STATE OF GEORGIA

v.

STEPHEN MCDANIEL

INDICTMENT: 11-CR-67684

[2.4]

MOTION TO SUPPRESS
WARRANTLESS SEARCH OF STEPHEN MCDANIEL'S
APARTMENT BY DETECTIVE PATTERSON
AND INVESTIGATOR MCDONALD AND OTHERS

STEPHEN MCDANIEL, through counsel, requests that this Court exclude any evidence gathered by law enforcement during a warrantless search of Stephen McDaniel's apartment, which occurred soon after Detective David Patterson, District Attorney Investigator Jim McDonald, Assistant District Attorney Sandra Matson, and Assistant District Attorney Elizabeth Bobbitt transported Stephen from the detective Bureau back to his apartment. The acquisition of any evidence, which includes observations by police while in the apartment, violated Mr. McDaniel's expectation of privacy, protected by the United States Constitution, Fourth Amendment, applied to the states through the Fourteenth Amendment, and the Georgia Constitution, Article I, Section

I, Paragraph XIII. In addition, Mr. McDaniel makes this motion pursuant to O.C.G.A. § 17-5-30. The defense requests a hearing on this motion, but gives the Court this outline of some of the expected facts to be elicited through witnesses and documents and, thereby, helps frame the issues for the hearing by putting the State on notice. A more detailed brief, including argument and applicable law, will follow the hearing.

Factual Background¹

The police investigation into the fate of Lauren Giddings began around 9:00 a.m. on Wednesday, June 30, 2011. (19) Police encountered Stephen McDaniel soon after they arrived at the apartment complex at 1058 Georgia Avenue, when Sgt. Chapman knocked on Stephen's door and began speaking to him. (25) Detective David Patterson placed Stephen into his police car a few minutes later, where he interviewed him for the first time. (26) Not long after that, around 9:40 a.m., Patterson and other officers discovered what they later would learn was Lauren Giddings's torso in a trashcan at the apartments. (27) Soon after,

¹ Several motions include a factual background. Note that each one differs, even if only slightly in some instances, by including or excluding, or highlighting, those facts that pertain or not to the motion under consideration. In other words, we did not simply copy-and-paste the "Factual Background" section from motion to motion, so it's worth reading each time.

Patterson told Stephen to ride to the detective bureau with Sgt. Roney to be interviewed. (27)

During this second interview of Stephen by Patterson — this one on video at the detective bureau — Patterson told Stephen that he was asking other tenants at the apartments to give consent to police to search their apartments, and then he asked Stephen for consent to search. (30)

Stephen declined permission to search, explaining that he had several firearms in his apartment and that he was protective of them. (30)

Patterson then left Stephen in the interview room around 11:50 a.m. to go interview others. (32)

Later, Lt. Fletcher interrupted Patterson's interview of Garon Muller to tell him that Stephen was ready to be taken back home. (32) Instead of complying with Stephen's request, Patterson returned to the interview room, where he had told Stephen to remain, and resumed his interview of him. (32) (Or, if we're counting separate occasions of contact between Patterson and Stephen, this would be Patterson's third interview of Stephen).

Near the end of this third interview of Stephen by Patterson, he asked Stephen to allow police to search his apartment "for Lauren." (33)

He went on to tell Stephen that everybody else who lives there but Stephen had given consent to search. (33) Stephen again told Patterson that he could not search his apartment, that he had guns there and that he was protective of his space. (33) At this point, instead of taking "no" for an answer, Patterson states, "So you don't want me to look in your apartment, at all?" Stephen finally succumbs to the pressure from Patterson and agrees to let Patterson look in his apartment to "see if Lauren is there." After a brief absence, Patterson returns to the room, ordered Stephen to stand up, then requested that he lift his shirt to show him whether he had any marks on his torso.²

At this point, around 1:40 p.m., June 30, 2011, Patterson took Stephen back to his apartment, accompanied by District Attorney Investigator Jim McDonald, Assistant District Attorney Sandra Matson, and Assistant District Attorney Elizabeth Bobbitt. (34) Patterson and McDonald then walked through Stephen's apartment, accompanied by Stephen, ostensibly to "look for Lauren." (34) While in Stephen's apartment, Patterson saw a variety of items he thought to be worth noting in his report: (1) A "large Samurai type sword" in Stephen's

² This search is the subject of a separate motion to suppress.

bedroom; (2) a “large knife” in his bedroom; (3) a semi-automatic rifle on the bed; (4) two handguns on the bed; and (5) a “large cooler” near the front door. (34) At this point, after walking through Stephen’s apartment, Patterson told Stephen that the apartment was not released to him and to leave.³

Argument

The legality of this first warrantless search of Stephen’s apartment turns on whether Stephen’s “consent” was voluntary. Before discussing that, however, it is important to note that Patterson knew, though Stephen did not, that police had earlier discovered a female torso in a trashcan just outside the apartments where Lauren lived. That, combined with the fact that none of Lauren’s friends or family had heard from her since the previous Saturday night, June 26, 2011 — four days of silence — no doubt increased Patterson’s suspicion that the torso was Lauren’s and that Lauren herself would *not* be inside Stephen’s apartment. Thus, Patterson’s real intent was to search Stephen’s apartment for evidence that could connect him to Lauren’s murder and dismemberment. While

³ Patterson reports that Stephen asked to leave to go to the law school, so this fact will be in dispute, among many others, no doubt, at a hearing on this motion.

he may have had a hunch at this early point that Stephen played some part in Lauren's disappearance, he did not have "probable cause" to believe so, either to acquire a search warrant for Stephen's apartment or to arrest him. In addition, it does not appear from documents received by the defense that police had searched *any other apartments of tenants* at the point Patterson told Stephen that he had.

The Fourth Amendment provides as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

To turn a warrantless search from "unreasonable" to reasonable, the burden is on the State to show the Court that some exception to the warrant requirement exists. O.C.G.A. § 17-5-30.

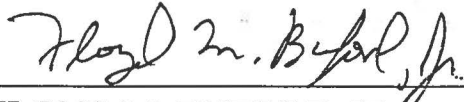
Police officers may ask a person for permission to search a private place even when they do not possess probable cause to believe that evidence of a crime may exist in that place and, thus, could not have acquired a warrant from a detached and neutral judge. In a scenario where police ask a person to allow them to search a place, any "consent"

given by the person must have been freely and voluntarily given, that is, permission must flow from the person's unfettered choice to allow the police to search the private place. If the "consent" flows from coercion or duress, express or implied, then it does not constitute consent at all, even if words and actions appear to have given permission for the search. That is precisely the situation here. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).


In order for the trial court to assess whether Stephen gave consent at all, freely and voluntarily, the court will have to conduct a hearing in order to gather the totality of the circumstances of the search. The burden, again, will remain on the State to persuade the court that Patterson had not placed Stephen under duress to get him to "consent." *Bumper v. North Carolina*, 391 U.S. 543 (1968); *Clare v. State*, 135 Ga.App. 281 (1975).

Thus, the defendant moves this court to exclude from evidence in this case any evidence discovered in the initial, warrantless, non-consensual search of Stephen's apartment.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



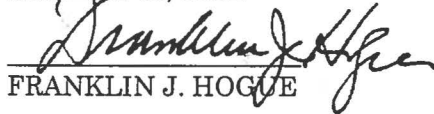
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.


FRANKLIN J. HOGUE

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341 Third Street
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478-738-0859 (fax)

IN THE SUPERIOR COURT OF BIBB COUNTY

STATE OF GEORGIA 2012 DEC 14 AM 10:55

STATE OF GEORGIA

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v.

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STEPHEN MCDANIEL

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DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

INDICTMENT: 11-CR-67684

[2.5]

MOTION TO SUPPRESS

WARRANTLESS SEARCH OF STEPHEN MCDANIEL'S
APARTMENT BY TRACY SERGEANT, HER CADAVER DOGS,
AND OTHER LAW ENFORCEMENT OFFICERS

STEPHEN MCDANIEL, through counsel, requests that this Court exclude any evidence gathered by law enforcement during a warrantless search of Stephen McDaniel's apartment, which occurred sometime around 3:20 p.m. on Wednesday, June 30, 2011. The acquisition of any evidence, which includes observations by police while in the apartment and purported alerts by cadaver dogs,¹ violated Mr. McDaniel's expectation of privacy, protected by the United States Constitution, Fourth Amendment, applied to the states through the Fourteenth Amendment, and the Georgia Constitution, Article I, Section I,

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¹ In a separate motion, the defense challenges the science of cadaver dog alerts under the *Harper* test for admissibility.

Paragraph XIII. In addition, Mr. McDaniel makes this motion pursuant to O.C.G.A. § 17-5-30.

Factual Background²

After conducting the first warrantless search of Stephen McDaniel's apartment,³ Patterson told Stephen that the apartment was not released to him and to leave.⁴ Stephen walked off in the direction of Mercer Law School, across the street from the apartments, when he encountered journalists and a television camera. In the course of an interview with them, Stephen learned that the police had discovered a body on the premises.

After regaining his composure, to some extent, Stephen was confronted by Patterson, who requested that he sign a form giving Macon Police Crime Lab officers permission to search his apartment. (34) Stephen did not respond and did not sign anything. (35) Instead, he was

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² Several motions include a factual background. Note that each one differs, even if only slightly in some instances, by including or excluding, or highlighting, those facts that pertain or not to the motion under consideration. In other words, we did not simply copy-and-paste the "Factual Background" section from motion to motion, so it's worth reading each time. These are notice motions, however, so the "facts" alleged in them are subject to the factual findings by this Court after evidentiary hearings.

³ This search is the focus of a separate motion to suppress.

⁴ Patterson reports that Stephen asked to leave to go to the law school, so this fact will be in dispute, among many others, no doubt, at a hearing on this motion.

placed in a Macon Police Department panel truck parked outside the apartments, which truck served as a "Mobile Command Center." (35) Stephen would remain in that truck, under constant law enforcement supervision, for approximately the next nine hours, with some short time out when he was taken into his apartment while the dog search was conducted.

At some point early that first afternoon, Wednesday, June 30, 2011, Tracy Sergeant arrived from Villa Rica, Georgia, with her two human remains detection dogs, commonly known as cadaver dogs. Ms. Sergeant and several law enforcement officers ultimately entered Stephen's apartment, after seating him on the couch in his apartment, and conducted a second search, this time with cadaver dogs. This search was conducted without a warrant and without consent.

Argument

The Fourth Amendment provides as follows:

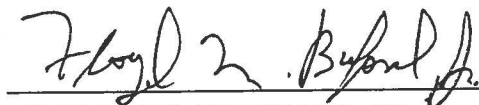
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

To turn a warrantless search from “unreasonable” to reasonable, the burden is on the State to show the Court that some exception to the warrant requirement exists. O.C.G.A. § 17-5-30.

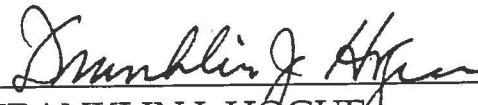
If the State asserts through law enforcement witnesses that Stephen gave consent to this search, the burden remains upon the State to prove it. *Bumper v. North Carolina*, 391 U.S. 543 (1968); *Clare v. State*, 135 Ga.App. 281 (1975) Police officers may ask a person for permission to search a private place even when they do not possess probable cause to believe that evidence of a crime may exist in that place and, thus, could not have acquired a warrant from a detached and neutral judge. In a scenario where police ask a person to allow them to search a place, any “consent” given by the person must have been freely and voluntarily given, that is, permission must flow from the person’s unfettered choice to allow the police to search the private place. If the “consent” flows from coercion or duress, express or implied, then it does not constitute consent at all, even if words and actions appear to have given permission for the search. That is precisely the situation here. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).

In order for the trial court to assess whether Stephen gave consent at all, freely and voluntarily, the court will have to conduct a hearing in order to gather the totality of the circumstances of the search. Thus, the defendant moves this court to conduct an evidentiary hearing on this motion and to exclude from evidence in this case any evidence discovered in this second, warrantless, non-consensual search of Stephen's apartment.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.


FRANKLIN J. HOGUE

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IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

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2012 DEC 14 AM 10:55

DIANNE BRANNON, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

STATE OF GEORGIA

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v.

INDICTMENT: 11-CR-67684

STEPHEN MCDANIEL

[2.6]
MOTION TO SUPPRESS THE SEARCH WARRANT
FOR 1058 GEORGIA AVENUE, APARTMENT FOUR,
MACON, GEORGIA, ISSUED JUNE 30, 2011, AT 8:42 P.M.
(WARRANT ONE)

STEPHEN MCDANIEL, through counsel, requests that this Court exclude any evidence gathered by law enforcement during a search of Stephen McDaniel's apartment, which occurred sometime around 11:00 p.m. on Thursday, June 30, 2011. The acquisition of any evidence, which includes observations by police while in the apartment, violated Stephen's expectation of privacy, protected by the United States Constitution, Fourth Amendment, applied to the states through the Fourteenth Amendment, and the Georgia Constitution, Article I, Section I, Paragraph XIII. In addition, Stephen makes this motion pursuant to O.C.G.A. § 17-5-30. In support of this Motion, Stephen shows the following:

I. Factual Background

After conducting two warrantless searches of Stephen McDaniel's apartment and a warrantless search of his person, both of which are the subject of separate and distinct motions in this case, Detective David Patterson of the Macon Police Department applied for a search warrant for Stephen's apartment. This apartment, number four, is located at 1058 Georgia Avenue, Macon, Georgia. Based upon a sworn affidavit and other sworn oral testimony, Judge Edgar W. Ennis, Jr., issued a search warrant for Stephen's apartment.

This warrant authorized law enforcement to search the location for, and subsequently seize, any "blood and blood spatter, body parts and body tissue and fluids, knives, cutting implements and instruments capable of dismembering a human body, cleaning and laundry supplies, garbage bags, paint and painting tools, which are evidence of the crime of murder in violation of O.C.G.A. §16-5-1." This warrant was issued at 8:42 p.m. on June 30, 2011 and executed at 11:00 p.m. of the same day.¹

¹ These times come from the time of issuance and execution from the warrant itself and the warrant return.

II. Argument

A. The Information the Warrant Is Based Upon Is the Fruit of Illegal Warrantless Searches and, as Such, Subjects All Subsequent Evidence Seized to Exclusion

The United States Supreme Court in *Weeks v. United States*, 232 U.S. 383 (1914) adopted what has become known as the "exclusionary rule" as a remedy for violations of the Fourth Amendment to the United States Constitution. The exclusionary rule bars the use of unconstitutionally seized evidence at trial. The Court found this rule necessary to prevent the reduction of the Fourth Amendment to a mere "form of words." *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). The Supreme Court incorporated the exclusionary rule of the Fourth Amendment to the states through the Fourteenth Amendment in *Rochin v. California*, 342 U.S. 165 (1952) and *Mapp v. Ohio*, 367 U.S. 643 (1961).

When the exclusionary rule applies, it extends to both the direct products of governmental illegality and its secondarily-derived evidence; commonly referred to as the "fruit of the poisonous tree."

Nardone v. United States, 308 U.S. 338, 341 (1939).

Here, this warrant is the fruit of illegal warrantless searches of Stephen's apartment and person. These searches are the subject of other motions in this case. Information gathered during these warrantless intrusions upon Stephen's home and body served as the basis for the warrant at issue here and, as such, all information gathered as a result of the illegal searches is tainted, irreparably, by the illegality and should be excluded.

B. Law Enforcement Exceeded the Scope of the Search Warrant by Seizing Items Not Listed on the Warrant, Thus Exposing Those Items to the Taint of Illegality, and Exposing All Items Later Seized as a Result to Exclusion as the Fruits of the Illegal Seizure

The Fourth Amendment provides as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The particularity requirement within the Fourth Amendment was important to the drafters of the Bill of Rights to protect citizens from the dangers of general warrants and writs of assistance, which were common under the rule of the English Crown during the colonial period

in America. Warrants must be particular as to the things to be seized so that "nothing is left to the discretion of the officer executing the warrant." *Marron v. United States*, 275 U.S. 192, 196 (1927). Particularity in the warrant assures law enforcement and the property owner that any approved seizure of property is constitutional. *Groh v. Ramirez*, 540 U.S. 551 (2004).

A search warrant that describes the things to be seized with sufficient particularity authorizes law enforcement officers to search wherever the items subject to seizure can be found within the premises. *United States v. Ross*, 456 U.S. 798, 820-21 (1982). However, the types of items seized must comport with the types of items authorized to be seized in the warrant. Other items not mentioned in the warrant may be seized under the "plain view" doctrine "only where it is immediately apparent to the police that they have evidence before them." *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). "Immediately apparent" means that police have probable cause to seize the item in plain view. *Arizona v. Hicks*, 480 U.S. 321 (1987).

Here, Macon Police Department officers seized a number of items during the execution of this first warrant that do not fit within any

category of item authorized for seizure in the warrant. This warrant identifies seizable types of items with the requisite particularity, yet officers executing the warrant exceeded that scope and collected items that do not fit within any reasonable interpretation of the subject matter of the warrant. While law enforcement can seize items in plain view if there is probable cause to do so, none of the items seized here, which lie outside the scope of the warrant, are "immediately apparent" as evidence in the crime of murder. Since law enforcement seized items that lie outside the subject matter of the warrant and a warrantless (plain view) seizure was not permissible under the circumstances, these items, and the fruits of their illegal seizure, should be excluded.

Thus, the Defendant moves this Court to exclude from evidence in this case all items seized as a result of this warrant as the fruits of prior unconstitutional, warrantless searches or, in the alternative, exclude all items seized during the execution of this warrant that lie outside the scope of items to be seized in the warrant.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



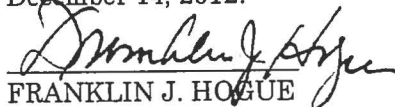
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.


FRANKLIN J. HOGUE

HOGUE & HOGUE
341 Third Street
P.O. Box 1795
Macon, GA 31202
478-750-8040
478-738-0859 (fax)

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

1058 Georgia Avenue, Apartment #4
Macon, Bibb County, Georgia

SEARCH WARRANT

To Detective David Patterson, applicant, and to any and all other peace officers for the State of Georgia, Greetings:

Based upon sworn affidavit made in writing before me, and based upon other sworn oral testimony, I find that probable cause exists which authorizes the issuance of a warrant to search the location known as 1058 Georgia Avenue, Apartment #4, Macon, Bibb County Georgia, for blood and blood spatter, body parts and body tissue and fluids, knives, cutting implements and instruments capable of dismembering a human body, cleaning and laundry supplies, garbage bags, paint and painting tools, which are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1. The location is more particularly described as follows: This property, 1058 Georgia Avenue, contains two apartment buildings with eight apartments each. Apartment #4 is located in the building which is closest to Georgia Avenue. This apartment building is a two-story apartment building with a stucco-type finish. There is an awning over a patio porch on the building. The building contains eight (8) apartments. If one is standing on Georgia Avenue and facing the building, Apartment #4 is the top right-hand apartment. It bears the number four on the door,

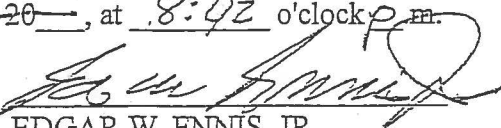
Upon the finding of such evidence pursuant to this Warrant officers are authorized to seize the evidence; provided that an accurate inventory of all property seized is made to this Court upon this Warrant's return.

Therefore, you are hereby commanded to search the location and seize the property herein named, leaving behind a copy of this warrant and a receipt of the property seized.

Pursuant to the Georgia Code, officers shall return this Warrant to this Court; the return must show the date and time of the warrant's execution, and must contain an inventory of property seized.

This Warrant shall be executed within ten days of its issuance, or, failing that, be returned to this Court and marked, "Not Executed."

Given under my hand and Seal this 30th day of June, 2011, at 8:42 o'clock P.m.


EDGAR W. ENNIS, JR.
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia



000616

RETURN

This warrant was executed at the named location at 11:00 o'clock P.m. on the 30 day of June, 2001.

The following evidence was seized:

- | Knife, curved in a black leather case
- | Knife, "maxum" folding pocket knife black in color
- | Knife, red in color, Swiss army, in black case
- | Ka-bar knife, in plastic, black in color holster
- | Knife, folding style, in brown leather case
- | sword, red in color, wooden handle, in black case
- | pair of white & blue, new Balace shoes.
- | white, cotton, V shape cloth
- | white, cotton, T-shirt
- | white, Haynes underwear
- | gray, bath towel
- | gray, T-shirt
- | Knife, in black cloth case, folding type, with red oval in handle
- | gray towel
- | 3 cutting equipment "Kutis & Swords."

Additional Items added 7-1-11

RETURN

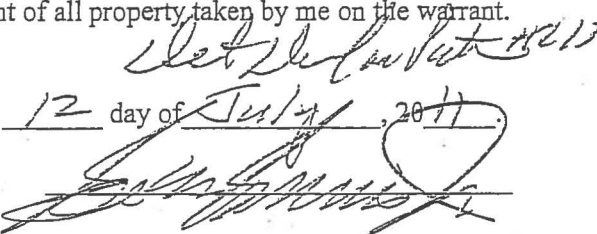
I received the within search warrant on JUNE 30, 2011 at 2042 HOURS and have executed it as follows: On JUNE 30, 2011 at 2300 o'clock PM., I searched the (person) (premises or curtilage) (automobiles or other vehicles) described in the warrant and I left a copy of the warrant at THE RESIDENCE together with a receipt for the items seized.

The following inventory of property taken pursuant to the warrant:

Knife, curved, in a black case
Knife, "Maxim", folding pocket knife, black in color
Knife, red in color, Swiss Army, in black case
Ka-Bar knife, in plastic, black in color, holster
Knife, folding style, in brown leather case
Sword, red in color, wooden handle, in black case
Pair of white and blue, New Balance shoes
White, cotton, "V" shaped cloth
White, cotton T-shirt
White, Hane's underwear
Gray bath towel
Gray T-shirt
Knife, in black cloth case, folding type, with red oval in handle
Gray towel
13 cutting equipment "Kaite's & Swords"

This inventory was made in the presence of SGT S GATLIN & SGT B NEWBERRY and I swear that this inventory is a true and detailed account of all property taken by me on the warrant.

Subscribed and sworn to and returned before me this 12 day of July, 2011.


JUDGE OF THE SUPERIOR COURT
MACON JUDICIAL CIRCUIT
STATE OF GEORGIA

000617

FILED
CLERK OF SUPERIOR COURT
BIBB COUNTY GEORGIA

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA 2012 DEC 14 AM 10:55

STATE OF GEORGIA :
v. :
STEPHEN MCDANIEL :
INDICTMENT: 11-CR-67684

[2.7]
MOTION TO SUPPRESS THE SEARCH WARRANT
FOR 1058 GEORGIA AVENUE, APARTMENT FOUR,
MACON, GEORGIA, ISSUED JULY 1, 2011, AT 1:55 A.M.
(WARRANT TWO)

STEPHEN MCDANIEL, through counsel, requests that this Court exclude any evidence gathered by law enforcement during a search of Stephen McDaniel's apartment, which occurred sometime around 3:00 a.m. on Friday, July 1, 2011. The acquisition of any evidence, which includes observations by police while in the apartment, violated Stephen's expectation of privacy, protected by the United States Constitution, Fourth Amendment, applied to the states through the Fourteenth Amendment, and the Georgia Constitution, Article I, Section I, Paragraph XIII. In addition, Stephen makes this motion pursuant to O.C.G.A. § 17-5-30. In support of this Motion, Stephen shows the following:

I. Factual Background

After conducting two warrantless searches of Stephen's apartment and a warrantless search of his person, both of which are the subject of separate and distinct motions in this case, Detective David Patterson of the Macon Police Department applied for a search warrant for Stephen's apartment (warrant one). Detective David Patterson applied for this warrant (warrant two) within two hours of the execution of warrant one. Stephen's apartment, number four, is located at 1058 Georgia Avenue, Macon, Georgia. Based upon a sworn affidavit and other sworn oral testimony, Judge Edgar W. Ennis, Jr., issued a search warrant for Stephen's apartment (warrant two).

This warrant authorized law enforcement to search the location for, and subsequently seize, any "blood and blood spatter, body parts and body tissue and fluids, knives, firearms, or any instrument capable of inflicting bodily injury, cutting implements, instruments capable of dismembering a human body, cleaning and laundry supplies, garbage bags, paint and painting tools, computers, cameras and any other digital storage devices, which are evidence of crime of Murder, in violation of

O.C.G.A. §16-5-1." This warrant was issued at 1:55 a.m. on July 1, 2011 and executed at 3:00 a.m. of the same day.¹

II. Argument

A. The Information the Warrant Is Based Upon Is the Fruit of Illegal Warrantless Searches and, as Such, Subjects All Subsequent Evidence Seized to Exclusion

The United States Supreme Court in *Weeks v. United States*, 232 U.S. 383 (1914) adopted what has become known as the "exclusionary rule" as a remedy for violations of the Fourth Amendment to the United States Constitution. The exclusionary rule bars the use of unconstitutionally seized evidence at trial. The Court found this rule necessary to prevent the reduction of the Fourth Amendment to a mere "form of words." *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). The Supreme Court incorporated the exclusionary rule of the Fourth Amendment to the states through the Fourteenth Amendment in *Rochin v. California*, 342 U.S. 165 (1952) and *Mapp v. Ohio*, 367 U.S. 643 (1961).

When the exclusionary rule applies it extends to both the direct products of governmental illegality and its secondarily-derived

¹ These times come from the time of issuance and execution from the warrant itself and the warrant return.

evidence; commonly referred to as the "fruit of the poisonous tree."

Nardone v. United States, 308 U.S. 338, 341 (1939).

Here, this warrant is the fruit of illegal warrantless searches of Stephen's apartment and person. These searches are the subject of other motions in this case. Information gathered during these warrantless intrusions upon Stephen's home and body served as the basis for the warrant at issue here and, as such, all information gathered as a result of the illegal searches is tainted, irreparably, by the illegality and should be excluded. Additionally, observations by law enforcement during the execution of warrant one (namely, items identified for seizure in warrant two that were not within warrant one) led to warrant two. Warrant one is the subject of another motion in this case and, should that warrant be excluded, all observations from the execution of that warrant, which served, partially, as the basis for warrant two, should be excluded as well as the fruits of illegal police conduct.

B. Law Enforcement Exceeded the Scope of the Search
Warrant by Seizing Items Not Listed on the Warrant, Thus
Exposing Those Items to the Taint of Illegality, and
Exposing All Items Later Seized as a Result to Exclusion as
the Fruits of the Illegal Seizure

The Fourth Amendment provides as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The particularity requirement within the Fourth Amendment was important to the drafters of the Bill of Rights to protect citizens from the dangers of general warrants and writs of assistance which were common under the rule of the English Crown during the colonial period in America. Warrants must be particular as to the things to be seized so that "nothing is left to the discretion of the officer executing the warrant." *Marron v. United States*, 275 U.S. 192, 196 (1927). Particularity in the warrant assures law enforcement and the property owner that any approved seizure of property is constitutional. *Groh v. Ramirez*, 540 U.S. 551 (2004).

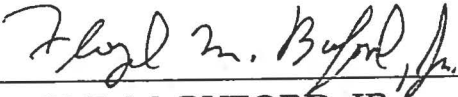
A search warrant that describes the things to be seized with sufficient particularity authorizes law enforcement officers to search wherever within the premises the items subject to seizure can be found. *United States v. Ross*, 456 U.S. 798, 820-21 (1982). However, the types of items seized must comport with the types of items authorized to be

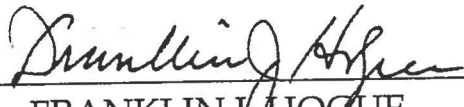
seized in the warrant. Other items not mentioned in the warrant may be seized under the "plain view" doctrine "only where it is immediately apparent to the police that they have evidence before them." *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). "Immediately apparent" means that police have probable cause to seize the item in plain view. *Arizona v. Hicks*, 480 U.S. 321 (1987).

Here, Macon Police Department officers seized a number of items during the execution of this warrant that do not fit within any category of item authorized for seizure in the warrant. This warrant states seizable types of items with the requisite particularity, yet officers executing the warrant exceeded that scope and collected items that do not fit within any reasonable interpretation of the subject matter of the warrant. While law enforcement can seize items in plain view if there is probable cause to do so, none of the items seized here, that lie outside the scope of the warrant, are "immediately apparent" as evidence in the crime of murder. Since law enforcement seized items that lie outside the subject matter of the warrant and a warrantless (plain view) seizure was not permissible under the circumstances, these items, and the fruits of their illegal seizure, should be excluded.

Thus, the Defendant moves this Court to exclude from evidence in this case all items seized as a result of this warrant as the fruits of prior unconstitutional, warrantless searches or, in the alternative, exclude all items seized during the execution of this warrant that lie outside the scope of items to be seized in the warrant.

December 14, 2012.


FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805


FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.


FRANKLIN J. HOGUE

HOGUE & HOGUE
341 Third Street
P.O. Box 1795
Macon, GA 31202
478-750-8040
478-738-0859 (fax)

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

1058 Georgia Avenue, Apartment #4
Macon, Bibb County, Georgia

APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

The undersigned hereby applies for issuance of a Search Warrant. The applicant swears that he has probable cause to believe that blood and blood spatter, body parts, and body tissue and fluids, knives, firearms, or any other instrument capable of inflicting bodily injury, cutting implements, instruments capable of dismembering a human body, cleaning and laundry supplies, garbage bags, paint and painting tools, computers, cameras and any other digital storage devices, which are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1, are concealed in a certain location, to-wit: 1058 Georgia Avenue, Apt. #4, Macon, Georgia. This Apartment building is a two-story apartment building with stucco-type finish. There is an awning over a patio porch on the building. The building contains eight apartments. If one is standing on Georgia Avenue and facing the building, Apartment #4 is the top right-hand apartment. It bears the number four on the door.

The applicant, based upon facts and circumstances contained in the affidavit of Detective David Patterson, which is attached to this Application and made a part of it by reference, shows probable cause exists to cause a search warrant to issue requiring search be made of the above-named location for the above-named evidence.

This Application is made for the purpose of enforcement of the criminal laws of this State and not for the purpose of any personal, civil, or property rights. The applicant is an officer of the law with the Macon Police Department.

Respectfully submitted, this 31TH day of JULY 20011.

Det. David Patterson #213
APPLICANT

Sworn to and subscribed before me, this 1 day of July, 20011.

at 1:50 o'clock pm.

Edgar W. Ennis, Jr.
EDGAR W. ENNIS, JR.
Judge of the Superior Court
Macon Judicial Circuit



000606

EXHIBIT A

AFFIDAVIT

My name is Detective David Patterson and I am currently employed by the Macon Police Department. I am a P.O.S.T. Certified Law Enforcement Officer for the State of Georgia. I have been employed by the Macon Police Department since 1996. I am assigned to the Criminal Investigations Division investigating violent crimes. I have been assigned to the violent crimes division since 2001. Prior to working in the violent crimes division, I have worked as a patrol officer answering calls for service from residence within the community. I have investigated misdemeanor crimes, traffic accidents, felony crimes, and assisted in preventing crimes. I have been a field-training officer; training newly hired officers once they have completed their basic mandate course. I have received specialized training in gang investigation, domestic violence, criminal investigation, criminal sexuality, homicide investigations, writing search warrants and affidavits. I have received over five hundred hours of training. I have investigated numerous misdemeanor and felony crimes, including homicides, robberies, rapes, aggravated assaults, and many others. I have participated in multi-jurisdictional prosecutions. I have assisted other officers and detectives writing and executing search warrants. I have interviewed and interrogated hundreds of victims, witnesses, and suspects. I have testified in municipal court, magistrate court, state court, and superior court.

The following is the basis for finding probable cause so as to authorize the search warrant for which I have applied: On June 30, 2011, Mercer Police Department received a call to respond to 1058 Georgia Ave. regarding a missing person, Lauren Giddings, a resident Apartment #2 at said location. Upon arrival, Officer Vince Broccolo met with the complainant, Ashley Moorehouse. Ms. Moorehouse advised Officer Broccolo that her friend, Ms. Giddings, was missing and would not answer the front door to Ms. Giddings' apartment. Complainant stated that she entered Ms. Giddings apartment with a hidden key and could not locate Ms. Giddings. Officer Broccolo then

contacted the Macon Police Department ("MPD") and notified them of the situation. MPD Officer Copeland responded to the scene and met with Complainant and several other concerned friends. Later that same morning, at approximately 9:15 a.m., I, Detective David Patterson, received the report of the missing person and I proceeded to the location where I was met upon arrival by the original Complainant and Sgt. Steve Gatlin, with the MPD Crime Lab.

While standing on the outside of the apartment complex, I smelled a strong odor coming from the garbage containers and observed several flies swarming around the trash containers. I immediately recognized this odor to be that of dead person, which I know and recognize from my training and experience having investigated homicides previously. I notified Sgt. Gatlin, who opened the garbage containers, and he found two large black garbage bags. At this time, Sgt. Gatlin opened one of the trash bags and discovered that it contained what appeared to be a human female torso with what appeared to be a superficial cut or wound to the chest. The human torso did not have a head, arms, or legs.

I then began to interview neighbors. Sgt. Chapman and I knocked on the door of Apartment #4 and Stephen McDaniel came to the door and we talked with him. We asked McDaniel if he would come to the Detective Bureau and give a statement regarding his neighbor Lauren Giddings. He agreed to come. I interviewed McDaniel at the Detective Bureau at which time I saw a red mark on the left side of his face near his nose. I asked him if he had any other marks on his body. He lifted his t-shirt and revealed what appeared to be two fresh scratch marks on the right side of his stomach. These scratch marks were approximately three to five inches in length. During the interview of Stephen McDaniel, I asked him for consent to search his apartment, which he granted. McDaniel gave oral consent which was recorded on video.

We then left the Detective Bureau and proceeded back to Georgia Avenue. When we arrived at McDaniel's apartment, which is apartment #4, he unlocked the door and allowed me to

go in and look around. While inside the apartment, I observed a large "Samurai-type" sword in his bedroom and a large knife with a blade in excess of a foot long also in his bedroom. I also observed numerous firearms, including what appeared to be a semi-automatic rifle and a semi-automatic handgun lying on the bed. I also saw a large cooler sitting near the front door. We then left the apartment, and McDaniel, who was not in custody, left our presence.

Subsequently, McDaniel returned to the Georgia Avenue area and struck up a conversation with MPD detectives and DA's Office personnel who were on the scene, including DA's Investigator Jim McDonald. In the presence of MPD Detective Chapman, Investigator McDonald asked McDaniel whether he would consent to allow investigators from the Macon Police Department Crime Scene unit to enter his apartment. McDaniel agreed that he would allow this, provided he could be present. McDaniel then admitted officers back into Apartment #4.

Because of the torso being found in the garbage container and the necessity to search for additional body parts, Macon Police Department personnel had contacted Tracy Sargent, who handles two human remains detection (HRD) dogs, commonly known as a "cadaver dogs", called Cinco and Chance. HRD canines are trained to detect the odor of human remains, which may include not only corpses but also blood, semen, and other body fluids or tissues, for a period of up to several years after said specimens were in a particular location. Cinco has been certified on the local, state, national and international levels for HRD for the last five years. Chance has been certified on the local and state level for HRD for the last seven months. Ms. Sargent has been handling HRD canines for the last 18 years and is a handler, trainer, evaluator, master trainer, and subject matter expert in the training and handling of HRD canines. HRD canines are trained to detect the odor of human remains, which may include not only corpses but also blood, semen, and other body fluids or tissues.

In the presence of Detective Scott Chapman, MPD Sgt. Steve Gatlin, and DA Investigator McDonald, and McDaniel, Ms. Sargent utilized her HRD canines to sniff the inside of McDaniel's apartment. Ms. Sargent has reported to me that she first utilized Cinco to sniff the inside of McDaniel's apartment (#4) and then utilized Chance to sniff the inside of McDaniel's apartment also. Both Cinco and Chance separately alerted on the scent of human remains in the back bedroom and bathroom of McDaniel's apartment.

Ms. Sargent also utilized Cinco and Chance to perform separate searches of Apartment #1, which is located in the same building, directly below Apartment #2, which is Lauren Giddings apartment. Cinco and Chance both alerted on the scent of human remains in the bathroom of Apartment #1 and the back wall of the living room of Apartment #1. According to MPD Crime Scene Investigator Amy Wheeler, the wall where the HRD canines alerted appeared to have been freshly painted in some sections, and there were some small stains and smears which appeared to be consistent with dried blood.

The human torso found in the garbage dumpster was submitted to the Office of the Medical Examiner for examination. Dr. Gaultney Kraft was the medical examiner who performed the post-mortem examination. Dr. Kraft reported that the torso was clad in cotton shorts with no underwear or shirt. Dr. Kraft located a few hairs which appeared to be brown in color and several inches long on the abdomen, and a clump of hair on the back of the shorts which appeared to be made up of a mixture of brown and blonde hair which appeared to be saturated in decomposition fluid. Stephen McDaniel has long shoulder-length brown hair. Lauren Giddings had blonde hair.

At approximately 6:00 p.m. on today's date, MPD Crime Scene Investigators performed a "luminol examination" of bathroom of Lauren Gidding's apartment, which is Apartment #2 of the same building located at 1058 Georgia Avenue. This examination revealed the possibility of

000610

substantial quantities of blood both around the drain of the bathroom tub and splattered on the walls of the tub and above the tub to a height of approximately four feet.

Stephen McDaniel identified a certain four-door black Geo Prism, bearing Georgia tag number BTL2870, which is parked outside the apartments, as being his vehicle. A visual inspection from the outside of this car reveals large dark stains possibly consistent in appearance with blood on both the front and rear seats. The Vehicle Identification Number (VIN) of this car is 1Y1SK5281VZ443940. A check of the tag registration reveals that the vehicle is registered to Stephen McDaniel at 1058 Georgia Avenue, Apt. #4.

Based on all of the above, I believe that probable cause exists to search the apartment of Stephen McDaniel located at 1058 Georgia Avenue, Apartment #4 for blood and blood spatter, body parts, and body tissue and fluids, knives, firearms, or any other instrument capable of inflicting bodily injury, cutting implements, instruments capable of dismembering a human body, cleaning and laundry supplies, garbage bags, paint and painting tools, computers, cameras and any other digital storage devices, which are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1. All of the above information is true and correct to the best of my knowledge and belief.

This 31st day of June, 2011

Det. [Signature]
AFFIANT

Sworn to and subscribed before me, this 1 day of July, 2011

at 1:50 o'clock a.m.

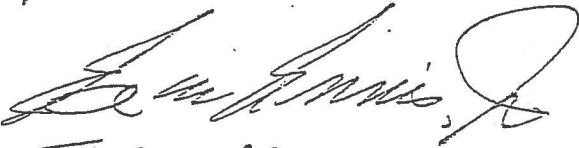
[Signature]
EDGAR W. ENNIS, JR.
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

000611

Other sworn oral testimony:

- Subject stays on computer while at home, uses same as main source of ~~computer~~ communication, frequently visits sites featuring pornography, has ordered guns, knives, + ammunition from the internet
- during survey of apartment w/ subject's consent, observed a bedroom used as an office which contained a computer as well as a digital camera
- based upon my training, I am aware that often individuals involved in ritualistic or sexually-motivated killing will photograph the body or otherwise record the event for future enjoyment.

Taken as sworn testimony from
Detective David Patterson on Friday,
July 1, 2011, at 1:50 a.m.


JSCMJC

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

1058 Georgia Avenue, Apartment #4
Macon, Bibb County, Georgia

SEARCH WARRANT

To Detective David Patterson, applicant, and to any and all other peace officers for the State of Georgia, Greetings:

Based upon sworn affidavit made in writing before me, and based upon other sworn oral testimony, I find that probable cause exists which authorizes the issuance of a warrant to search a certain 1058 Georgia Avenue, Apt. #4, Macon, Georgia, for blood and blood spatter, body parts, and body tissue and fluids, knives, firearms, or any other instrument capable of inflicting bodily injury, cutting implements, instruments capable of dismembering a human body, cleaning and laundry supplies, garbage bags, paint and painting tools, computers, cameras and any other digital storage devices, which are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1.

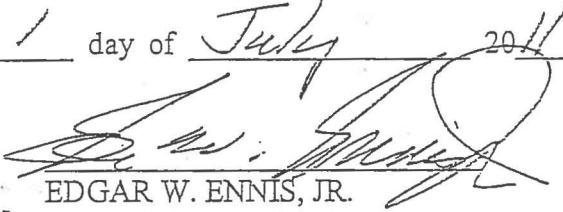
Upon the finding of such evidence pursuant to this Warrant officers are authorized to seize the evidence; provided that an accurate inventory of all property seized is made to this Court upon this Warrant's return.

Therefore, you are hereby commanded to search the location and seize the evidence herein named, leaving behind a copy of this warrant and a receipt of the property seized.

Pursuant to the Georgia Code, officers shall return this Warrant to this Court; the return must show the date and time of the warrant's execution, and must contain an inventory of property seized.

This Warrant shall be executed within ten days of its issuance, or, failing that, be returned to this Court and marked, "Not Executed."

Given under my hand and Seal this 1 day of July, 2011, at 1:55 o'clock PM.


EDGAR W. ENNIS, JR.
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

000613

RETURN

This warrant was executed at the named location at 0300 o'clock A.m. on the 1 day of July, 2004.

The following evidence was seized:

- 1 - black, SKS rifle ^{ser#} GP7508169 & clip
- 1 - handgun, 9mm nickel & black in color, ^{ser#} EA 41214, black holster
- 1 - Black, Cannon camera
- 1 - handgun, 10mm, nickel & black in color ^{ser#} EA 42183
- 1 - rope, seave line, white in color, nylon
- 1 - wooden stick, 4' long
- 1 - wooden stick, 6' long
- strip of duck tape, gray in color
- 1 - mesh, chain mail vest
- 1 - white in color rope in clear bag
- 4 - baseball bats.
- 1 - hand shaver, black tip, wooden handle
- wode of hair
- laptop, gray in color
- ext. harddrive, black in color
- SD card reader.
- pack of writing papers with handwriting on it.
- cell phone, gray in color "nokia"
- foam cup with name lauran written on it.
- Walmart receipt for DG-23-11

RETURN

I received the within search warrant on JULY 1, 2011 at 0155 HOURS and have executed it as follows: On JULY 1, 2011, at 0300 o'clock AM., I searched the (person) (premises or curtilage) (automobiles or other vehicles) described in the warrant and I left a copy of the warrant at THE RESIDENCE together with a receipt for the items seized.

The following inventory of property taken pursuant to the warrant:

Century Arms International Model GP1975 7.62 Caliber Rifle

Serial number: GP7508169.

Tangfolio Model: Witness Caliber: 10mm Pistol Serial number: EA42183

Tangfolio Model: Witness Caliber: 9mm Pistol Serial number: EA41214

Black Canon camera

Rope, secre line, white in color, nylon

wooden stick, 4 foot long

wooden stick, 6 foot long

strip of duct tape, gray in color

Mesh, chain mail vest

White in color rope in clear bag

4 Baseball bats

hand sheave, black tip, wooden handle

wad of hair

laptop, gray in color

ext hard drive, black in color

SD card reader

Pack of writing papers with handwriting on it

Cell phone, gray in color, "Nokia"

Foam cup with "Lauren" written on it

Wal Mart receipt for 06-23-11

"P" trap

Shoelace

Bayonet

One "Wal Mart" key

Silver case with journal and laptop

Stack of Kroger receipts

Several pieces of cloth strips

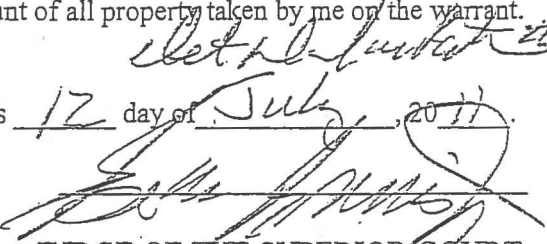
One "Georgia" key

Bibb County Law Clerk ID

green scrub sponge

This inventory was made in the presence of SGT S GATLIN & SGT B NEWBERRY and I swear that this inventory is a true and detailed account of all property taken by me on the warrant.

Subscribed and sworn to and returned before me this 12 day of July, 2011.


JUDGE OF THE SUPERIOR COURT
MACON JUDICIAL CIRCUIT
STATE OF GEORGIA

000614

RETURN

I received the within search warrant on JULY 1, 2011 at 0155 HOURS and have executed it as follows: On JULY 1, 2011 at 0300 o'clock AM., I searched the (person) (premises or curtilage) (automobiles or other vehicles) described in the warrant and I left a copy of the warrant at THE RESIDENCE together with a receipt for the items seized.

The following inventory of property taken pursuant to the warrant:

Igloo cooler, red with white top

* This item was collected as evidence at the same time and date as all the other items on this warrant but was accidentally left off the original list of items.

This inventory was made in the presence of SGT S GATLIN & SGT B NEWBERRY and I swear that this inventory is a true and detailed account of all property taken by me on the warrant.

Subscribed and sworn to and returned before me this 12 day of July 2011

Det. H. L. L. #213
[Signature]
JUDGE OF THE SUPERIOR COURT
MACON JUDICIAL CIRCUIT
STATE OF GEORGIA

000615

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

FILED
CLERK'S OFFICE
2012 DEC 14 AM 10:55

LIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

STATE OF GEORGIA

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v.

INDICTMENT: 11-CR-67684

STEPHEN MCDANIEL

[2.8]

MOTION TO SUPPRESS THE SEARCH WARRANT
FOR A BLACK GEO PRISM, VIN 1Y1SK5281VZ443940,
ISSUED JULY 1, 2011, AT 1:55 A.M.
(WARRANT THREE)

STEPHEN MCDANIEL, through counsel, requests that this Court exclude any evidence gathered by law enforcement during a search of Stephen McDaniel's car (black in color, 1997 Geo Prism, bearing license plate BTL2870, VIN 1Y1SK5281VZ443940), which occurred sometime around 12:39 p.m. on Sunday, July 3, 2011. The acquisition of any evidence violated Stephen's expectation of privacy, protected by the United States Constitution, Fourth Amendment, applied to the states through the Fourteenth Amendment, and the Georgia Constitution, Article I, Section I, Paragraph XIII. In addition, Stephen makes this motion pursuant to O.C.G.A. § 17-5-30. In support of this Motion, Stephen shows the following:

I. Factual Background

After conducting two warrantless searches of Stephen's apartment and a warrantless search of his person, both of which are the subject of separate and distinct motions in this case, Detective David Patterson of the Macon Police Department applied for a search warrant for Stephen's apartment (warrant one). Detective David Patterson applied for this warrant (warrant three) within two hours of the execution of warrant one. Stephen's car was located outside his apartment, number four, located at 1058 Georgia Avenue, Macon, Georgia. Based upon a sworn affidavit and other sworn oral testimony, Judge Edgar W. Ennis, Jr., issued a search warrant for Stephen's car (warrant three).

This warrant authorized law enforcement to search the car for, and subsequently seize, any "blood and blood spatter, body parts and body tissue and fluids, knives, firearms, or any instrument capable of inflicting bodily injury, cutting implements, instruments capable of dismembering a human body, cleaning and laundry supplies, garbage bags, paint and painting tools, computers, cameras and any other digital storage devices, which are evidence of crime of Murder, in violation of O.C.G.A. §16-5-1."

This warrant was issued at 1:55 a.m. on July 1, 2011 and executed at 12:39 p.m. on July 3, 2011.¹

II. Argument

A. The Information the Warrant Is Based Upon Is the Fruit of Illegal Warrantless Searches and, as Such, Subjects All Evidence Seized As A Result to Exclusion

The United States Supreme Court in *Weeks v. United States*, 232 U.S. 383 (1914) adopted what has become known as the “exclusionary rule” as a remedy for violations of the Fourth Amendment to the United States Constitution. The exclusionary rule bars the use of unconstitutionally seized evidence at trial. The Court found this rule necessary to prevent the reduction of the Fourth Amendment to a mere “form of words.” *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). The Supreme Court incorporated the exclusionary rule of the Fourth Amendment to the states through the Fourteenth Amendment in *Rochin v. California*, 342 U.S. 165 (1952) and *Mapp v. Ohio*, 367 U.S. 643 (1961).

When the exclusionary rule applies it extends to both the direct products of governmental illegality and its secondarily-derived

¹ These times come from the time of issuance and execution from the warrant itself and the warrant return.

evidence; commonly referred to as the "fruit of the poisonous tree."

Nardone v. United States, 308 U.S. 338, 341 (1939).

Here, this warrant is the fruit of illegal warrantless searches of Stephen's apartment and person. These searches are the subject of other motions in this case. Information gathered during these warrantless intrusions upon Stephen's home and body served as the basis for the warrant at issue here and, as such, all information gathered as a result of the illegal searches is tainted, irreparably, by the illegality and should be excluded.

B. Law Enforcement Exceeded the Scope of the Search Warrant by Seizing Items Not Listed on the Warrant, Thus Exposing Those Items to the Taint of Illegality, and Exposing All Items Later Seized as a Result to Exclusion as the Fruits of the Illegal Seizure

The Fourth Amendment provides as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The particularity requirement within the Fourth Amendment was important to the drafters of the Bill of Rights to protect citizens from the

dangers of general warrants and writs of assistance which were common under the rule of the English Crown during the colonial period in America. Warrants must be particular as to the things to be seized so that "nothing is left to the discretion of the officer executing the warrant." *Marron v. United States*, 275 U.S. 192, 196 (1927). Particularity in the warrant assures law enforcement and the property owner that any approved seizure of property is constitutional. *Groh v. Ramirez*, 540 U.S. 551 (2004).

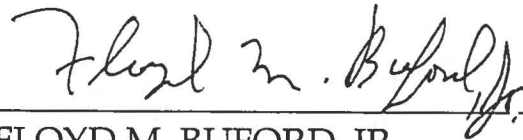
A search warrant that describes the things to be seized with sufficient particularity authorizes law enforcement officers to search wherever within the premises the items subject to seizure can be found. *United States v. Ross*, 456 U.S. 798, 820-21 (1982). However, the types of items seized must comport with the types of items authorized to be seized in the warrant. Other items not mentioned in the warrant may be seized under the "plain view" doctrine "only where it is immediately apparent to the police that they have evidence before them." *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). "Immediately apparent" means that police have probable cause to seize the item in plain view. *Arizona v. Hicks*, 480 U.S. 321 (1987).

Here, Macon Police Department officers seized a number of items during the execution of this warrant that do not fit within any category of item authorized for seizure in the warrant. This warrant states seizable types of items with the requisite particularity, yet officers executing the warrant exceeded that scope and collected items that do not fit within any reasonable interpretation of the subject matter of the warrant. While law enforcement can seize items in plain view if there is probable cause to do so, none of the items seized here, that lie outside the scope of the warrant, are "immediately apparent" as evidence in the crime of murder. Since law enforcement seized items that lie outside the subject matter of the warrant and a warrantless (plain view) seizure was not permissible under the circumstances, these items, and the fruits of their illegal seizure, should be excluded.

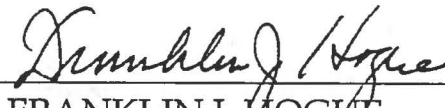
Additionally, warrant three authorizes the search and seizure of a Geo Prism with Georgia license plate #BTL 2870, yet Stephen's car had a vanity license plate containing the word "PRAAY." It is conceivable that this fact was known to law enforcement since the car was already either in the police impound lot at the time of issuance of the warrant.

Thus, the Defendant moves this Court to exclude from evidence in this case all items seized as a result of this warrant as the fruits of prior unconstitutional, warrantless searches or, in the alternative, exclude all items seized during the execution of this warrant that lie outside the scope of items to be seized in the warrant.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



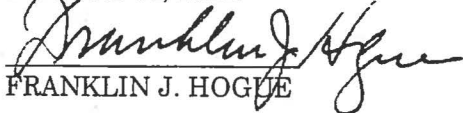
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.


FRANKLIN J. HOGUE

HOGUE & HOGUE
341 Third Street
P.O. Box 1795
Macon, GA 31202
478-750-8040
478-738-0859 (fax)

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

One Four-Door 1997 Black Geo Prism
Bearing Georgia Tag Number BTL2870,
VIN #1Y1SK5281VZ443940

APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

The undersigned hereby applies for issuance of a Search Warrant. The applicant swears that he has probable cause to believe that blood and blood spatter, body parts, and body tissue and fluids, knives, firearms, or any other instrument capable of inflicting bodily injury, cutting implements, instruments capable of dismembering a human body, cleaning and laundry supplies, garbage bags, paint and painting tools, computers, cameras and any other digital storage devices, which are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1, are concealed in a certain location, to-wit: a certain four-door black in color 1997 Geo Prism, bearing Georgia License Tag #BTL2870, VIN 1Y1SK5281VZ443940.

The applicant, based upon facts and circumstances contained in the affidavit of Detective David Patterson, which is attached to this Application and made a part of it by reference, shows probable cause exists to cause a search warrant to issue requiring search be made of the above-named location for the above-named evidence.

This Application is made for the purpose of enforcement of the criminal laws of this State and not for the purpose of any personal, civil, or property rights. The applicant is an officer of the law with the Macon Police Department.

Respectfully submitted, this 1st day of JULY 2001.

[Signature]
APPLICANT

Sworn to and subscribed before me, this 1 day of July, 2001,
at 1:50 o'clock a.m.

[Signature]
EDGAR W. ENNIS, JR.

Judge of the Superior Court
Macon Judicial Circuit



000598

EXHIBIT A

AFFIDAVIT

My name is Detective David Patterson and I am currently employed by the Macon Police Department. I am a P.O.S.T. Certified Law Enforcement Officer for the State of Georgia. I have been employed by the Macon Police Department since 1996. I am assigned to the Criminal Investigations Division investigating violent crimes. I have been assigned to the violent crimes division since 2001. Prior to working in the violent crimes division, I have worked as a patrol officer answering calls for service from residence within the community. I have investigated misdemeanor crimes, traffic accidents, felony crimes, and assisted in preventing crimes. I have been a field-training officer; training newly hired officers once they have completed their basic mandate course. I have received specialized training in gang investigation, domestic violence, criminal investigation, criminal sexuality, homicide investigations, writing search warrants and affidavits. I have received over five hundred hours of training. I have investigated numerous misdemeanor and felony crimes, including homicides, robberies, rapes, aggravated assaults, and many others. I have participated in multi-jurisdictional prosecutions. I have assisted other officers and detectives writing and executing search warrants. I have interviewed and interrogated hundreds of victims, witnesses, and suspects. I have testified in municipal court, magistrate court, state court, and superior court.

The following is the basis for finding probable cause so as to authorize the search warrant for which I have applied: On June 30, 2011, Mercer Police Department received a call to respond to 1058 Georgia Ave. regarding a missing person, Lauren Giddings, a resident Apartment #2 at said location. Upon arrival, Officer Vince Broccolo met with the complainant, Ashley Moorehouse. Ms. Moorehouse advised Officer Broccolo that her friend, Ms. Giddings, was missing and would not answer the front door to Ms. Giddings' apartment. Complainant stated that she entered Ms. Giddings apartment with a hidden key and could not locate Ms. Giddings. Officer Broccolo then

contacted the Macon Police Department ("MPD") and notified them of the situation. MPD Officer Copeland responded to the scene and met with Complainant and several other concerned friends. Later that same morning, at approximately 9:15 a.m., I, Detective David Patterson, received the report of the missing person and I proceeded to the location where I was met upon arrival by the original Complainant and Sgt. Steve Gatlin, with the MPD Crime Lab.

While standing on the outside of the apartment complex, I smelled a strong odor coming from the garbage containers and observed several flies swarming around the trash containers. I immediately recognized this odor to be that of dead person, which I know and recognize from my training and experience having investigated homicides previously. I notified Sgt. Gatlin, who opened the garbage containers, and he found two large black garbage bags. At this time, Sgt. Gatlin opened one of the trash bags and discovered that it contained what appeared to be a human female torso with what appeared to be a superficial cut or wound to the chest. The human torso did not have a head, arms, or legs.

I then began to interview neighbors. Sgt. Chapman and I knocked on the door of Apartment #4 and Stephen McDaniel came to the door and we talked with him. We asked McDaniel if he would come to the Detective Bureau and give a statement regarding his neighbor Lauren Giddings. He agreed to come. I interviewed McDaniel at the Detective Bureau at which time I saw a red mark on the left side of his face near his nose. I asked him if he had any other marks on his body. He lifted his t-shirt and revealed what appeared to be two fresh scratch marks on the right side of his stomach. These scratch marks were approximately three to five inches in length. During the interview of Stephen McDaniel, I asked him for consent to search his apartment, which he granted. McDaniel gave oral consent which was recorded on video.

We then left the Detective Bureau and proceeded back to Georgia Avenue. When we arrived at McDaniel's apartment, which is apartment #4, he unlocked the door and allowed me to

go in and look around. While inside the apartment, I observed a large "Samurai-type" sword in his bedroom and a large knife with a blade in excess of a foot long also in his bedroom. I also observed numerous firearms, including what appeared to be a semi-automatic rifle and a semi-automatic handgun lying on the bed. I also saw a large cooler sitting near the front door. We then left the apartment, and McDaniel, who was not in custody, left our presence.

Subsequently, McDaniel returned to the Georgia Avenue area and struck up a conversation with MPD detectives and DA's Office personnel who were on the scene, including DA's Investigator Jim McDonald. In the presence of MPD Detective Chapman, Investigator McDonald asked McDaniel whether he would consent to allow investigators from the Macon Police Department Crime Scene unit to enter his apartment. McDaniel agreed that he would allow this, provided he could be present. McDaniel then admitted officers back into Apartment #4.

Because of the torso being found in the garbage container and the necessity to search for additional body parts, Macon Police Department personnel had contacted Tracy Sargent, who handles two human remains detection (HRD) dogs, commonly known as a "cadaver dogs", called Cinco and Chance. HRD canines are trained to detect the odor of human remains, which may include not only corpses but also blood, semen, and other body fluids or tissues, for a period of up to several years after said specimens were in a particular location. Cinco has been certified on the local, state, national and international levels for HRD for the last five years. Chance has been certified on the local and state level for HRD for the last seven months. Ms. Sargent has been handling HRD canines for the last 18 years and is a handler, trainer, evaluator, master trainer, and subject matter expert in the training and handling of HRD canines. HRD canines are trained to detect the odor of human remains, which may include not only corpses but also blood, semen, and other body fluids or tissues.

000601

In the presence of Detective Scott Chapman, MPD Sgt. Steve Gatlin, and DA Investigator McDonald, and McDaniel, Ms. Sargent utilized her HRD canines to sniff the inside of McDaniel's apartment. Ms. Sargent has reported to me that she first utilized Cinco to sniff the inside of McDaniel's apartment (#4) and then utilized Chance to sniff the inside of McDaniel's apartment also. Both Cinco and Chance separately alerted on the scent of human remains in the back bedroom and bathroom of McDaniel's apartment.

Ms. Sargent also utilized Cinco and Chance to perform separate searches of Apartment #1, which is located in the same building, directly below Apartment #2, which is Lauren Giddings apartment. Cinco and Chance both alerted on the scent of human remains in the bathroom of Apartment #1 and the back wall of the living room of Apartment #1. According to MPD Crime Scene Investigator Amy Wheeler, the wall where the HRD canines alerted appeared to have been freshly painted in some sections, and there were some small stains and smears which appeared to be consistent with dried blood.

The human torso found in the garbage dumpster was submitted to the Office of the Medical Examiner for examination. Dr. Gaultney Kraft was the medical examiner who performed the post-mortem examination. Dr. Kraft reported that the torso was clad in cotton shorts with no underwear or shirt. Dr. Kraft located a few hairs which appeared to be brown in color and several inches long on the abdomen, and a clump of hair on the back of the shorts which appeared to be made up of a mixture of brown and blonde hair which appeared to be saturated in decomposition fluid. Stephen McDaniel has long shoulder-length brown hair. Lauren Giddings had blonde hair.

At approximately 6:00 p.m. on today's date, MPD Crime Scene Investigators performed a "luminol examination" of bathroom of Lauren Gidding's apartment, which is Apartment #2 of the same building located at 1058 Georgia Avenue. This examination revealed the possibility of

Stephen McDaniel identified a certain four-door black Geo Prism, bearing Georgia tag number BTL2870, which is parked outside the apartments, as being his vehicle. A visual inspection from the outside of this car reveals large dark stains possibly consistent in appearance with blood on both the front and rear seats. The Vehicle Identification Number (VIN) of this car is 1Y1SK5281VZ443940.

This 1st day of July, 20 11

Sworn to and subscribed before me, this 1 day of July, 2011

at 1:50 o'clock a.m.
Edgar W. Eads, Jr.
 EDGAR W. EADS, JR.

000603

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

One Four-Door 1997 Black Geo Prism
Bearing Georgia Tag Number BTL2870,
VIN #1Y1SK5281VZ443940

SEARCH WARRANT

To Detective David Patterson, applicant, and to any and all other peace officers for the State of Georgia, Greetings:

Based upon sworn affidavit made in writing before me, and based upon other sworn oral testimony, I find that probable cause exists which authorizes the issuance of a warrant to search a certain four-door black in color 1997 Geo Prism, bearing Georgia License Tag #BTL2870, VIN 1Y1SK5281VZ443940, blood and blood spatter, body parts, and body tissue and fluids, knives, firearms, or any other instrument capable of inflicting bodily injury, cutting implements, instruments capable of dismembering a human body, cleaning and laundry supplies, garbage bags, paint and painting tools, computers, cameras and any other digital storage devices, which are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1.

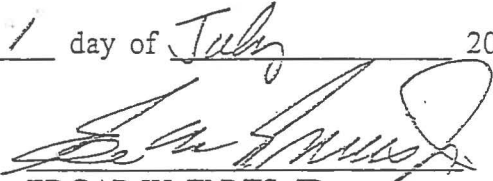
Upon the finding of such evidence pursuant to this Warrant officers are authorized to seize the evidence; provided that an accurate inventory of all property seized is made to this Court upon this Warrant's return.

Therefore, you are hereby commanded to search the location and seize the evidence herein named, leaving behind a copy of this warrant and a receipt of the property seized.

Pursuant to the Georgia Code, officers shall return this Warrant to this Court; the return must show the date and time of the warrant's execution, and must contain an inventory of property seized.

This Warrant shall be executed within ten days of its issuance, or, failing that, be returned to this Court and marked, "Not Executed."

Given under my hand and Seal this 1 day of July 2011, at
1:55 o'clock a.m.


EDGAR W. ENNIS, JR.
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

000604

RETURN

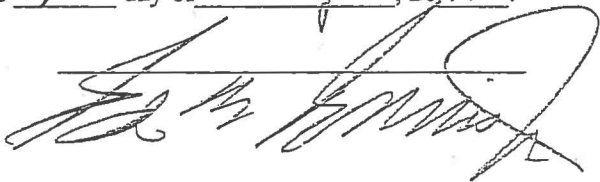
I received the within search warrant on JULY 1, 2011 AT 0155 AM and have executed it as follows: On JULY 3, 2011 at 1239 o'clock PM., I searched the (person) (premises or curtilage) (automobiles or other vehicles) described in the warrant and I left a copy of the warrant IN THE VEHICLE together with a receipt for the items seized.

The following inventory of property taken pursuant to the warrant:

Fabric Samples cut from rear seat
Scrapings from airbag area
Earring from glove compartment
Keyless remote from under front
passenger seat
Headliner
Floor mats (4)
Two Ponchos from glove compartment
Black bag from trunk containing: Two ponchos, tire gauge, and air hose
Swab samples from airbag area
Swab samples from steering wheel
Blue bead from rear passenger floor
Rearview mirror
Fiber rolls
Front seat covers
Trunk mat

This inventory was made in the presence of SGT J WOODARD AND SGT B NEWBERRY and I swear that this inventory is a true and detailed account of all property taken by me on the warrant.

Subscribed and sworn to and returned before me this 12 day of July, 2011.


JUDGE OF THE SUPERIOR COURT
MACON JUDICIAL CIRCUIT
STATE OF GEORGIA

000605

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

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CLERK'S OFFICE
2012 DEC 14 AM 10:55

STATE OF GEORGIA

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DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

v.

INDICTMENT: 11-CR-67684

STEPHEN MCDANIEL

[2.9]
MOTION TO SUPPRESS THE SEARCH WARRANT
FOR THE PERSON OF STEPHEN MCDANIEL,
ISSUED JULY 1, 2011, AT 1:55 A.M.
(WARRANT FOUR)

STEPHEN MCDANIEL, through counsel, requests that this Court exclude any evidence gathered by law enforcement during a search of Stephen McDaniel's person, which occurred sometime around 3:15 a.m. on Friday, July 1, 2011. This acquisition of evidence violated Stephen's expectation of privacy, protected by the United States Constitution, Fourth Amendment, applied to the states through the Fourteenth Amendment, and the Georgia Constitution, Article I, Section I, Paragraph XIII. In addition, Stephen makes this motion pursuant to O.C.G.A. § 17-5-30. In support of this Motion, Stephen shows the following:

I. Factual Background

After conducting two warrantless searches of Stephen's apartment and a warrantless search of his person, both of which are the subject of separate and distinct motions in this case, Detective David Patterson of the Macon Police Department applied for a search warrant for Stephen's apartment (warrant one). Detective David Patterson applied for this warrant (warrant four) within two hours of the execution of warrant one. Based upon a sworn affidavit and other sworn oral testimony, Judge Edgar W. Ennis, Jr., issued a search warrant for Stephen's person (warrant four).

This warrant authorized law enforcement to search of Stephen's person for hair samples, fingerprints, saliva, fingernail clippings and full body photographs, which are evidence of crime of Murder, in violation of O.C.G.A. §16-5-1." This warrant was issued at 1:55 a.m. on July 1, 2011 and executed at 3:15 a.m. of the same day.¹

HOGUE & HOGUE
341 Third Street
P.O. Box 1795
Macon, GA 31202
478-750-8040
478-738-0859 (fax)

¹ These times come from the time of issuance and execution from the warrant itself and the warrant return.

II. Argument

A. The Information the Warrant Is Based Upon Is the Fruit of Illegal Warrantless Searches and, as Such, Subjects All Evidence Seized As A Result to Exclusion

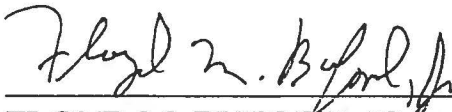
The United States Supreme Court in *Weeks v. United States*, 232 U.S. 383 (1914) adopted what has become known as the “exclusionary rule” as a remedy for violations of the Fourth Amendment to the United States Constitution. The exclusionary rule bars the use of unconstitutionally seized evidence at trial. The Court found this rule necessary to prevent the reduction of the Fourth Amendment to a mere “form of words.” *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). The Supreme Court incorporated the exclusionary rule of the Fourth Amendment to the states through the Fourteenth Amendment in *Rochin v. California*, 342 U.S. 165 (1952) and *Mapp v. Ohio*, 367 U.S. 643 (1961).

When the exclusionary rule applies it extends to both the direct products of governmental illegality and its secondarily-derived evidence; commonly referred to as the “fruit of the poisonous tree.” *Nardone v. United States*, 308 U.S. 338, 341 (1939).

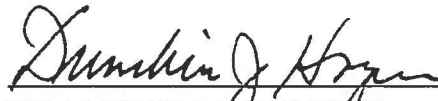
Here, this warrant is the fruit of illegal warrantless searches of Stephen's apartment and person. These searches are the subject of other motions in this case. Information gathered during these warrantless intrusions upon Stephen's home and body served as the basis for the warrant at issue here and, as such, all information gathered as a result of the illegal searches is tainted, irreparably, by the illegality and should be excluded.

Thus, the Defendant moves this Court to exclude from evidence in this case all items seized as a result of this warrant as the fruits of prior unconstitutional, warrantless searches.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



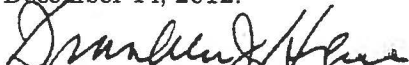
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.



HOGUE & HOGUE
341 Third Street
P.O. Box 1795
Macon, GA 31202
478-750-8040
478-738-0859 (fax)

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

Stephen McDaniel
W/M DOB 09/20/1985

APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

The undersigned hereby applies for issuance of a Search Warrant. The applicant swears that he has probable cause to believe that hair samples, fingerprints, saliva, fingernail clippings and full body photographs, which are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1, are concealed in a certain location, to-wit: the person of Stephen McDaniel, W/M, DOB 09/20/1985.

The applicant, based upon facts and circumstances contained in the affidavit of Detective David Patterson, which is attached to this Application and made a part of it by reference, shows probable cause exists to cause a search warrant to issue requiring search be made of the above-named location for the above-named evidence.

This Application is made for the purpose of enforcement of the criminal laws of this State and not for the purpose of any personal, civil, or property rights. The applicant is an officer of the law with the Macon Police Department.

Respectfully submitted, this 31 day of JULY 20011.

David Patterson #213
APPLICANT

Sworn to and subscribed before me, this 1 day of July, 2011,
at 1:50 o'clock a.m.

Edgar W. Ennis, Jr.
EDGAR W. ENNIS, JR.
Judge of the Superior Court
Macon Judicial Circuit



000620

EXHIBIT A

AFFIDAVIT

My name is Detective David Patterson and I am currently employed by the Macon Police Department. I am a P.O.S.T. Certified Law Enforcement Officer for the State of Georgia. I have been employed by the Macon Police Department since 1996. I am assigned to the Criminal Investigations Division investigating violent crimes. I have been assigned to the violent crimes division since 2001. Prior to working in the violent crimes division, I have worked as a patrol officer answering calls for service from residence within the community. I have investigated misdemeanor crimes, traffic accidents, felony crimes, and assisted in preventing crimes. I have been a field-training officer; training newly hired officers once they have completed their basic mandate course. I have received specialized training in gang investigation, domestic violence, criminal investigation, criminal sexuality, homicide investigations, writing search warrants and affidavits. I have received over five hundred hours of training. I have investigated numerous misdemeanor and felony crimes, including homicides, robberies, rapes, aggravated assaults, and many others. I have participated in multi-jurisdictional prosecutions. I have assisted other officers and detectives writing and executing search warrants. I have interviewed and interrogated hundreds of victims, witnesses, and suspects. I have testified in municipal court, magistrate court, state court, and superior court.

The following is the basis for finding probable cause so as to authorize the search warrant for which I have applied: On June 30, 2011, Mercer Police Department received a call to respond to 1058 Georgia Ave. regarding a missing person, Lauren Giddings, a resident Apt. 2 at said location. Upon arrival, Officer Vince Broccolo met with the complainant, Ashley Moorehouse.

000621

Ms. Moorehouse advised Officer Broccolo that her friend, Ms. Giddings, was missing and would not answer the front door to Ms. Giddings' apartment. Complainant stated that she entered Ms. Giddings apartment with a hidden key and could not locate Ms. Giddings. Officer Broccolo then contacted the Macon Police Department ("MPD") and notified them of the situation. MPD Officer Copeland responded to the scene and met with Complainant and several other concerned friends. Later that same morning, at approximately 9:15 a.m., I, Det. David Patterson, received the report of the missing person and I proceeded to the location where I was met upon arrival by the original Complainant and Sgt. Steve Gatlin, with the MPD Crime Lab.

While standing on the outside of the apartment complex, I smelled a strong odor coming from the garbage containers and observed several flies swarming around the trash containers. I immediately recognized this odor to be that of dead person which I know and recognize from my training and experience having investigated homicides previously. I notified Sgt. Gatlin, who opened the garbage containers, and he found two large black garbage bags. At this time, Sgt. Gatlin opened one of the trash bags and discovered that it contained what appeared to be a human female torso with what appeared to be a superficial cut or wound to the chest. The human torso did not have a head, arms, or legs.

I then began to interview neighbors. Sgt. Chapman and I knocked on the door of Apartment #4 and Stephen McDaniel came to the door and we talked with him. We asked McDaniel if he would come to the Detective Bureau and give a statement regarding his neighbor Lauren Giddings. He agreed to come. I interviewed McDaniel at the Detective Bureau at which time I saw a red mark on the left side of his face near his nose. I asked him if he had any other marks on his body. He lifted his t-shirt and revealed what appeared to be two fresh scratch marks on the right side of his stomach. These scratch marks were approximately three to five

inches in length. During the interview of Stephen McDaniel, I asked him for consent to search his apartment, which he granted. McDaniel gave oral consent which was recorded on video.

We then left the Detective Bureau and proceeded back to Georgia Avenue. When we arrived at McDaniel's apartment, which is apartment #4, he unlocked the door and allowed me to go in and look around. While inside the apartment, I observed a large "Samurai-type" sword in his bedroom and a large knife with a blade in excess of a foot long also in his bedroom. I also observed numerous firearms, including what appeared to be a semi-automatic rifle and a semi-automatic handgun lying on the bed. I also saw a large cooler sitting near the front door. We then left the apartment, and McDaniel, who was not in custody, left our presence.

Subsequently, McDaniel returned to the Georgia Avenue area and struck up a conversation with MPD detectives and DA's Office personnel who were on the scene, including DA's Investigator Jim McDonald. In the presence of MPD Detective Chapman, Investigator McDonald asked McDaniel whether he would consent to allow investigators from the Macon Police Department Crime Scene unit to enter his apartment. McDaniel agreed that he would allow this, provided he could be present. McDaniel then admitted officers back into Apartment #4.

Because of the torso being found in the garbage container and the necessity to search for additional body parts, Macon Police Department personnel had contacted Tracy Sargent, who handles two human remains detection (HRD) dogs, commonly known as a "cadaver dogs", called Cinco and Chance. HRD canines are trained to detect the odor of human remains, which may include not only corpses but also blood, semen, and other body fluids or tissues, for a period of up to several years after said specimens were in a particular location. Cinco has been certified on the local, state, national and international levels for HRD for the last five years. Chance has

been certified on the local and state level for HRD for the last seven months. Ms. Sargent has been handling HRD canines for the last 18 years and is a handler, trainer, evaluator, master trainer, and subject matter expert in the training and handling of HRD canines. HRD canines are trained to detect the odor of human remains, which may include not only corpses but also blood, semen, and other body fluids or tissues.

In the presence of Detective Scott Chapman, MPD Sgt. Steve Gatlin, and DA Investigator McDonald, and McDaniel, Ms. Sargent utilized her HRD canines to sniff the inside of McDaniel's apartment. Ms. Sargent has reported to me that she first utilized Cinco to sniff the inside of McDaniel's apartment (#4) and then utilized Chance to sniff the inside of McDaniel's apartment also. Both Cinco and Chance separately alerted on the scent of human remains in the back bedroom and bathroom of McDaniel's apartment.

Ms. Sargent also utilized Cinco and Chance to perform separate searches of Apartment #1, which is located in the same building, directly below Apartment #2, which is Lauren Giddings apartment. Cinco and Chance both alerted on the scent of human remains in the bathroom of Apartment #1 and the back wall of the living room of Apartment #1. According to MPD Crime Scene Investigator Amy Wheeler, the wall where the HRD canines alerted appeared to have been freshly painted in some sections, and there were some small stains and smears which appeared to be consistent with dried blood.

The human torso found in the garbage dumpster was submitted to the Office of the Medical Examiner for examination. Dr. Gaultney Kraft was the medical examiner who performed the post-mortem examination. Dr. Kraft reported that the torso was clad in cotton shorts with no underwear or shirt. Dr. Kraft located a few hairs which appeared to be brown in color and several inches long on the abdomen, and a clump of hair on the back of the shorts which appeared to be made up of a mixture of brown and blonde hair which appeared to be

saturated in decomposition fluid. Stephen McDaniel has long shoulder-length brown hair. Lauren Giddings had blonde hair.

At approximately 6:00 p.m. on today's date, MPD Crime Scene Investigators performed a "luminol examination" of bathroom of Lauren Gidding's apartment, which is Apartment #2 of the same building located at 1058 Georgia Avenue. This examination revealed the possibility of substantial quantities of blood both around the drain of the bathroom tub and splattered on the walls of the tub and above the tub to a height of approximately four feet.

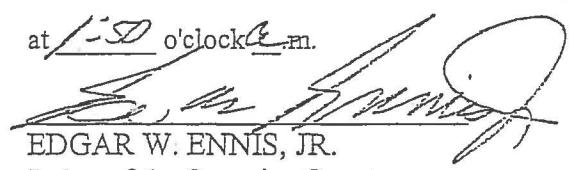
Stephen McDaniel identified a certain four-door black Geo Prism, tag number BTL2870, which is parked outside the apartments, as being his vehicle. A visual inspection from the outside of this car reveals large dark stains possibly consistent in appearance with blood on both the front and rear seats.

Based on all of the above, I believe that probable cause exists to obtain hair samples, fingerprints, saliva, fingernail clippings and full body photographs from Stephen McDaniel for comparison with those hairs found on the human torso believed to be that of Lauren Giddings, and with any hair samples found within the dwelling residence apartment of Lauren Giddings, DNA comparison with the same and. All of the above information is true and correct to the best of my knowledge and belief.

This 1st day of July, 20 11


AFFIANT

Sworn to and subscribed before me, this 1 day of July, 20 11,
at 1:50 o'clock a.m.


EDGAR W. ENNIS, JR.
Judge of the Superior Court

000625

Macon Judicial Circuit
State of Georgia

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

The Person of Stephen McDaniel
W/M DOB 09/20/1985

SEARCH WARRANT

To Detective David Patterson, applicant, and to any and all other peace officers for the State of Georgia, Greetings:

Based upon sworn affidavit made in writing before me, and based upon other sworn oral testimony, I find that probable cause exists which authorizes the issuance of a warrant to search the location known as the person of Stephen McDaniel, W/M, DOB 09/20/1985, for hair samples, fingerprints, saliva, fingernail clippings and full body photographs, which are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1.

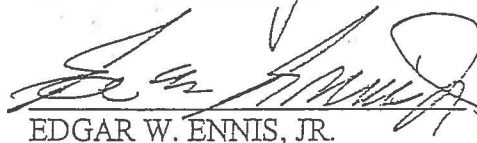
Upon the finding of such evidence pursuant to this Warrant officers are authorized to seize the evidence; provided that an accurate inventory of all property seized is made to this Court upon this Warrant's return.

Therefore, you are hereby commanded to search the location and seize the evidence herein named, leaving behind a copy of this warrant and a receipt of the property seized.

Pursuant to the Georgia Code, officers shall return this Warrant to this Court; the return must show the date and time of the warrant's execution, and must contain an inventory of property seized.

This Warrant shall be executed within ten days of its issuance, or, failing that, be returned to this Court and marked, "Not Executed."

Given under my hand and Seal this 1 day of July 2011, at 1:50 o'clock a.m.



EDGAR W. ENNIS, JR.
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

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RETURN

I received the within search warrant on JULY 1st, 2011 and have executed it as follows: On JULY 1st, 2011 at 0315 o'clock A.M., I searched the (person) (premises or curtilage) (automobiles or other vehicles) described in the warrant and I left a copy of the warrant with SUSPECT together with a receipt for the items seized.

The following inventory of property taken pursuant to the warrant:

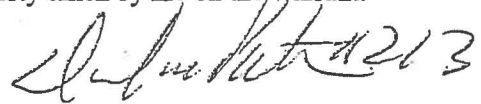
HAIR SAMPLES PULLED FROM THE HEAD OF STEPHEN MCDANIEL

BUCCAL SWABS FROM THE CHEEKS OF STEPHEN MCDANIEL

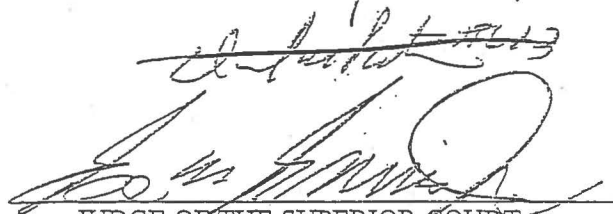
FINGERNAIL SCRAPINGS FROM THE FINGERS OF STEPHEN MCDANIEL

PHOTOGRAPHS TAKEN OF STEPHEN MCDANIEL AT THE TIME OF THE SERVICE OF THE SEARCHWARRANT

This inventory was made in the presence of SGT. STEVE GATLIN and SGT. BOBBY NEWBERRY and I swear that this inventory is a true and detailed account of all property taken by me on the warrant.



Subscribed and sworn to and returned before me this 12 day of July, 20 11.



JUDGE OF THE SUPERIOR COURT
MACON JUDICIAL CIRCUIT
STATE OF GEORGIA

000627

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

FILED
CLERK'S OFFICE
2012 DEC 14 AM 10:55

STATE OF GEORGIA

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:
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v.

INDICTMENT: 11-CR-67684

STEPHEN MCDANIEL

DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

[2.10]

MOTION TO SUPPRESS THE SEARCH WARRANT
FOR 1058 GEORGIA AVENUE, APARTMENT FOUR,
MACON, GEORGIA, ISSUED JULY 12, 2011, AT 7:40 P.M.
(WARRANT FIVE)

STEPHEN MCDANIEL, through counsel, requests that this Court exclude any evidence gathered by law enforcement during a search of Stephen McDaniel's apartment, which occurred sometime around 8:00 p.m. on Tuesday, July 1, 2011. The acquisition of any evidence, which includes observations by police while in the apartment, violated Stephen's expectation of privacy, protected by the United States Constitution, Fourth Amendment, applied to the states through the Fourteenth Amendment, and the Georgia Constitution, Article I, Section I, Paragraph XIII. In addition, Stephen makes this motion pursuant to O.C.G.A. § 17-5-30. In support of this Motion, Stephen shows the following:

I. Factual Background

After conducting two warrantless searches of Stephen's apartment and a warrantless search of his person, both of which are the subject of separate and distinct motions in this case, Detective David Patterson of the Macon Police Department applied for two search warrants for Stephen's apartment (warrants one and two). Detective Kenneth Chapman applied for this warrant eleven days after the execution of those warrants. Stephen's apartment, number four, is located at 1058 Georgia Avenue, Macon, Georgia. Based upon a sworn affidavit and other sworn oral testimony, Judge Tilman E. Self, III, issued this search warrant for Stephen's apartment (warrant five).

This warrant authorized law enforcement to search the location for, and subsequently seize, any "item containing blue fibers, which are evidence of crime of Murder, in violation of O.C.G.A. §16-5-1." This warrant was issued at 7:40 p.m. on July 12, 2011 and executed at 8:00 p.m. of the same day.¹

¹ These times come from the time of issuance and execution from the warrant itself and the warrant return.

II. Argument

A. The Information the Warrant Is Based Upon Is the Fruit of Illegal Warrantless Searches and, as Such, Subjects All Evidence Seized As A Result to Exclusion

The United States Supreme Court in *Weeks v. United States*, 232 U.S. 383 (1914) adopted what has become known as the “exclusionary rule” as a remedy for violations of the Fourth Amendment to the United States Constitution. The exclusionary rule bars the use of unconstitutionally seized evidence at trial. The Court found this rule necessary to prevent the reduction of the Fourth Amendment to a mere “form of words.” *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). The Supreme Court incorporated the exclusionary rule of the Fourth Amendment to the states through the Fourteenth Amendment in *Rochin v. California*, 342 U.S. 165 (1952) and *Mapp v. Ohio*, 367 U.S. 643 (1961).

When the exclusionary rule applies it extends to both the direct products of governmental illegality and its secondarily-derived evidence; commonly referred to as the “fruit of the poisonous tree.” *Nardone v. United States*, 308 U.S. 338, 341 (1939).

Here, this warrant is the fruit of illegal warrantless searches of Stephen's apartment and person. These searches are the subject of other motions in this case. Information gathered during these warrantless intrusions upon Stephen's home and body served as the basis for the warrant at issue here and, as such, all information gathered as a result of the illegal searches is tainted, irreparably, by the illegality and should be excluded. Additionally, observations by law enforcement during the execution of warrants one and two led to the request for and issuance of this warrant (warrant five). Warrants one and two are the subject of other motions in this case and, should those warrants be excluded, all observations from the execution of those warrants, which served, partially, as the basis for warrant five, should be excluded as well as the fruits of illegal police conduct.

B. Law Enforcement Exceeded the Scope of the Search Warrant by Seizing Items Not Listed on the Warrant, Thus Exposing Those Items to the Taint of Illegality, and Exposing All Items Later Seized as a Result to Exclusion as the Fruits of the Illegal Seizure

The Fourth Amendment provides as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall

issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The particularity requirement within the Fourth Amendment was important to the drafters of the Bill of Rights to protect citizens from the dangers of general warrants and writs of assistance which were common under the rule of the English Crown during the colonial period in America. Warrants must be particular as to the things to be seized so that "nothing is left to the discretion of the officer executing the warrant." *Marron v. United States*, 275 U.S. 192, 196 (1927). Particularity in the warrant assures law enforcement and the property owner that any approved seizure of property is constitutional. *Groh v. Ramirez*, 540 U.S. 551 (2004).

A search warrant that describes the things to be seized with sufficient particularity authorizes law enforcement officers to search wherever within the premises the items subject to seizure can be found. *United States v. Ross*, 456 U.S. 798, 820-21 (1982). However, the types of items seized must comport with the types of items authorized to be seized in the warrant. Other items not mentioned in the warrant may be seized under the "plain view" doctrine "only where it is immediately

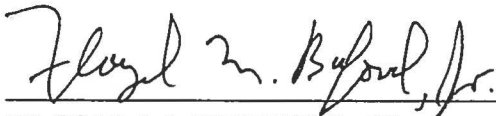
apparent to the police that they have evidence before them." *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). "Immediately apparent" means that police have probable cause to seize the item in plain view. *Arizona v. Hicks*, 480 U.S. 321 (1987).

Here, Macon Police Department officers seized a number of items during the execution of this warrant that do not fit within any category of item authorized for seizure in the warrant. This warrant states seizable types of items with the requisite particularity, yet officers executing the warrant exceeded that scope and collected items that do not fit within any reasonable interpretation of the subject matter of the warrant. While law enforcement can seize items in plain view if there is probable cause to do so, none of the items seized here, that lie outside the scope of the warrant, are "immediately apparent" as evidence in the crime of murder. Since law enforcement seized items that lie outside the subject matter of the warrant and a warrantless (plain view) seizure was not permissible under the circumstances, these items, and the fruits of their illegal seizure, should be excluded.

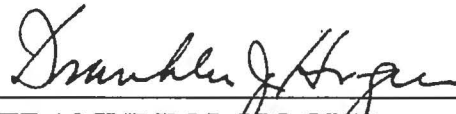
Thus, the Defendant moves this Court to exclude from evidence in this case all items seized as a result of this warrant as the fruits of prior

unconstitutional, warrantless searches or, in the alternative, exclude all items seized during the execution of this warrant that lie outside the scope of items to be seized in the warrant.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



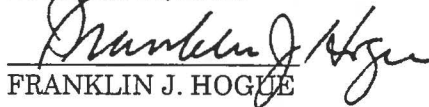
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.


FRANKLIN J. HOGUE

HOGUE & HOGUE
341 Third Street
P.O. Box 1795
Macon, GA 31202
478-750-8040
478-738-0859 (fax)

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

1058 Georgia Avenue, Apartment #4
Macon, Bibb County, Georgia

APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

The undersigned hereby applies for issuance of a Search Warrant. The applicant swears that he has probable cause to believe that materials containing blue fibers, which are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1, are concealed in a certain location, to-wit: 1058 Georgia Avenue, Apt. #4, Macon, Georgia. This Apartment building is a two-story apartment building with stucco-type finish. There is an awning over a patio porch on the building. The building contains eight apartments. If one is standing on Georgia Avenue and facing the building, Apartment #4 is the top right-hand apartment. It bears the number four on the door.

The applicant, based upon facts and circumstances contained in the affidavit of SGT Kenneth Scott Chapman, which is attached to this Application and made a part of it by reference, shows probable cause exists to cause a search warrant to issue requiring search be made of the above-named location for the above-named evidence.

This Application is made for the purpose of enforcement of the criminal laws of this State and not for the purpose of any personal, civil, or property rights. The applicant is an officer of the law with the Macon Police Department.

Respectfully submitted, this 12 day of July, 2011.

Kenneth Chapman 370 / 445-32
APPLICANT

Sworn to and subscribed before me, this 12 day of July, 2011,
at 7:40 o'clock P.m.

Tilman E. Self, III
TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit



000628

EXHIBIT A

AFFIDAVIT

My name is SGT Kenneth Scott Chapman and I am currently employed by the Macon Police Department. I am a P.O.S.T. Certified Law Enforcement Officer for the State of Georgia. I have been employed by the Macon Police Department since 1999. I am assigned to the Criminal Investigations Division investigating violent crimes. I have been assigned to the violent crimes division since 2009. Prior to working in the violent crimes division, I have worked as a patrol officer answering calls for service from residence within the community. I have investigated misdemeanor crimes, traffic accidents, including homicides, robberies, rapes, aggravated assaults, and many others. I have received specialized training in gang investigation, domestic violence, criminal investigation, homicide investigations, writing search warrants and affidavits. I have received over five hundred hours of training. I have participated in multi-jurisdictional prosecutions. I have assisted other officers and detectives writing and executing search warrants. I have interviewed and interrogated hundreds of victims, witnesses, and suspects. I have testified in municipal court, magistrate court, state court, and superior court.

The following is the basis for finding probable cause so as to authorize the search warrant for which I have applied: On June 30, 2011, Mercer Police Department received a call to respond to 1058 Georgia Ave. regarding a missing person, Lauren Giddings, a resident Apartment #2 at said location. Upon arrival, Officer Vince Broccolo met with the complainant, Ashley Morehouse. Ms. Morehouse advised Officer Broccolo that her friend, Ms. Giddings, was missing and would not answer the front door to Ms. Giddings' apartment. Complainant stated that she entered Ms. Giddings apartment with a hidden key and could not locate Ms. Giddings. Officer Broccolo then contacted the Macon Police Department ("MPD") and notified them of the situation. MPD Officer Copeland responded to the scene and met with Complainant and several other concerned friends.

000629

Later that same morning, at approximately 9:15 a.m., I, along with, Detective David Patterson, received the report of the missing person and we proceeded to the location. We were met upon arrival by the original Complainant and Sgt. Steve Gatlin, with the MPD Crime Lab.

While standing on the outside of the apartment complex, we smelled a strong odor coming from the garbage containers and observed several flies swarming around the trash containers. Detective David Patterson advised that he immediately recognized this odor to be that of dead person, which we both know and recognize from our training and experience having investigated homicides previously. Detective David Patterson notified Sgt. Gatlin, who opened the garbage containers, and he found two large black garbage bags. At this time, Sgt. Gatlin opened one of the trash bags and discovered that it contained what appeared to be a human female torso with what appeared to be a superficial cut or wound to the chest. The human torso did not have a head, arms, or legs.

Detective David Patterson and I then began to interview neighbors. We knocked on the door of Apartment #4 and Stephen McDaniel came to the door and we talked with him. We asked McDaniel if he would come to the Detective Bureau and give a statement regarding his neighbor Lauren Giddings. He agreed to come. Detective Patterson interviewed McDaniel at the Detective Bureau at which time he saw a red mark on the left side of his face near his nose. Detective Patterson asked him if he had any other marks on his body. He lifted his t-shirt and revealed what appeared to be two fresh scratch marks on the right side of his stomach. These scratch marks were approximately three to five inches in length. During the interview of Stephen McDaniel, Detective Patterson asked him for consent to search his apartment, which he granted. McDaniel gave oral consent which was recorded on video.

We then left the Detective Bureau and proceeded back to Georgia Avenue. When we arrived at McDaniel's apartment, which is apartment #4, he unlocked the door and allowed

000630

Detective Patterson to go in and look around. While inside the apartment, Detective Patterson observed a large "Samurai-type" sword in his bedroom and a large knife with a blade in excess of a foot long also in his bedroom. Detective Patterson also observed numerous firearms, including what appeared to be a semi-automatic rifle and a semi-automatic handgun lying on the bed. Detective Patterson also saw a large cooler sitting near the front door. We then left the apartment, and McDaniel, who was not in custody, left our presence.

Subsequently, McDaniel returned to the Georgia Avenue area and struck up a conversation with MPD detectives and DA's Office personnel who were on the scene, including DA's Investigator Jim McDonald. In the presence of MPD Detective Chapman, Investigator McDonald asked McDaniel whether he would consent to allow investigators from the Macon Police Department Crime Scene unit to enter his apartment. McDaniel agreed that he would allow this, provided he could be present. McDaniel then admitted officers back into Apartment #4.

Because of the torso being found in the garbage container and the necessity to search for additional body parts, Macon Police Department personnel had contacted Tracy Sargent, who handles two human remains detection (HRD) dogs, commonly known as a "cadaver dogs", called Cinco and Chance. HRD canines are trained to detect the odor of human remains, which may include not only corpses but also blood, semen, and other body fluids or tissues, for a period of up to several years after said specimens were in a particular location. Cinco has been certified on the local, state, national and international levels for HRD for the last five years. Chance has been certified on the local and state level for HRD for the last seven months. Ms. Sargent has been handling HRD canines for the last 18 years and is a handler, trainer, evaluator, master trainer, and subject matter expert in the training and handling of HRD canines. HRD canines are

trained to detect the odor of human remains, which may include not only corpses but also blood, semen, and other body fluids or tissues.

In the presence of Detective Scott Chapman, MPD Sgt. Steve Gatlin, and DA Investigator McDonald, and McDaniel, Ms. Sargent utilized her HRD canines to sniff the inside of McDaniel's apartment. Ms. Sargent has reported to me that she first utilized Cinco to sniff the inside of McDaniel's apartment (#4) and then utilized Chance to sniff the inside of McDaniel's apartment also. Both Cinco and Chance separately alerted on the scent of human remains in the back bedroom and bathroom of McDaniel's apartment.

Ms. Sargent also utilized Cinco and Chance to perform separate searches of Apartment #1, which is located in the same building, directly below Apartment #2, which is Lauren Giddings apartment. Cinco and Chance both alerted on the scent of human remains in the bathroom of Apartment #1 and the back wall of the living room of Apartment #1. According to MPD Crime Scene Investigator Amy Wheeler, the wall where the HRD canines alerted appeared to have been freshly painted in some sections, and there were some small stains and smears which appeared to be consistent with dried blood.

The human torso found in the garbage dumpster was submitted to the Office of the Medical Examiner for examination. Dr. Gaffney Kraft was the medical examiner who performed the post-mortem examination. Dr. Gaffney Kraft reported that the torso was clad in cotton shorts with no underwear or shirt. Dr. Gaffney Kraft located a few hairs which appeared to be brown in color and several inches long on the abdomen, and a clump of hair on the back of the shorts which appeared to be made up of a mixture of brown and blonde hair which appeared to be saturated in decomposition fluid. Stephen McDaniel has long shoulder-length brown hair. Lauren Giddings had blonde hair.

At approximately 6:00 p.m. on June 30, 2011 date, MPD Crime Scene Investigators performed a "luminol examination" of the bathroom in Lauren Giddings' apartment, which is Apartment #2 of the same building located at 1058 Georgia Avenue. This examination revealed the possibility of substantial quantities of blood both around the drain of the bathroom tub and splattered on the walls of the tub and above the tub to a height of approximately four feet.

Stephen McDaniel identified a certain four-door black Geo Prism, bearing Georgia tag number BTL2870, which is parked outside the apartments, as being his vehicle. A visual inspection from the outside of this car reveals large dark stains possibly consistent in appearance with blood on both the front and rear seats. The Vehicle Identification Number (VIN) of this car is 1Y1SK5281VZ443940. A check of the tag registration reveals that the vehicle is registered to Stephen McDaniel at 1058 Georgia Avenue, Apt. #4.

On July 1, 2011, Officers with the Macon Police Department located two keys inside Stephen McDaniel's apartment at 1058 Georgia Avenue, Apartment #4. One of the keys located was determined to be a "master key" that opens every door located on the property at 1058 Georgia Avenue. Stephen McDaniel was not authorized to be in possession of said key. The second key was determined to be a key to 1058 Georgia Avenue Apartment #2, the victim's apartment. Stephen McDaniel was not authorized to be in possession of said key.

On Tuesday, July 12, 2011, I received information from the FBI Crime Lab Trace Unit regarding initial results of trace evidence testing on items of evidence collected in this case. The initial results indicate that certain blue fiber(s) found on the shorts being worn by the victim at the time her torso was located are similar with blue fiber(s) found on a grey t-shirt found inside 1058 Georgia Avenue, Apartment #4. Therefore, it is reasonable to conclude that the common source of the similar fibers is currently located in 1058 Georgia Avenue, Apartment #4.

Based on all of the above, I believe that probable cause exists to search the apartment of Stephen McDaniel located at 1058 Georgia Avenue Apartment #4 for materials containing blue fibers, which are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1. All of the above information is true and correct to the best of my knowledge and belief.

This 12 day of July, 20 11

Kenneth Chapman 372
AFFIANT 7-12-11 372

Sworn to and subscribed before me, this 12 day of July, 20 11,

at 7:40 o'clock P.m.

Tilman E. Self, III
TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

000634

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

1058 Georgia Avenue, Apartment #4
Macon, Bibb County, Georgia

SEARCH WARRANT

To SGT Kenneth Scott Chapman, applicant, and to any and all other peace officers for the State of Georgia, Greetings:

Based upon sworn affidavit made in writing before me, and based upon other sworn oral testimony, I find that probable cause exists which authorizes the issuance of a warrant to search a certain 1058 Georgia Avenue, Apt. #4, Macon, Georgia, for any item containing blue fibers, which are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1.

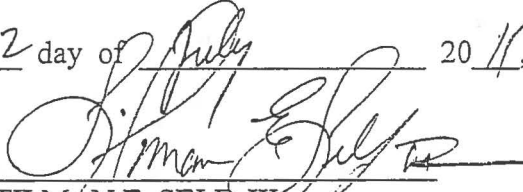
Upon the finding of such evidence pursuant to this Warrant officers are authorized to seize the evidence; provided that an accurate inventory of all property seized is made to this Court upon this Warrant's return.

Therefore, you are hereby commanded to search the location and seize the evidence herein named, leaving behind a copy of this warrant and a receipt of the property seized.

Pursuant to the Georgia Code, officers shall return this Warrant to this Court; the return must show the date and time of the warrant's execution, and must contain an inventory of property seized.

This Warrant shall be executed within ten days of its issuance, or, failing that, be returned to this Court and marked, "Not Executed."

Given under my hand and Seal this 12 day of July 20 11, at
7:40 o'clock p.m.


TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

000635

RETURN

This warrant was executed at the named location at _____ o'clock __.m. on the
_____ day of _____, 200__.

The following evidence was seized:

000636

IN THE SUPERIOR COURT OF BIBB COUNTY

STATE OF GEORGIA 2012 DEC 14 AM 10:55

STATE OF GEORGIA

:
:
:
:
:

CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

v.

INDICTMENT: 11-CR-67684

STEPHEN MCDANIEL

[2.11]

MOTION TO SUPPRESS THE SEARCH WARRANT
FOR 1058 GEORGIA AVENUE, APARTMENT FOUR,
MACON, GEORGIA, ISSUED JULY 20, 2011, AT 10:40 A.M.
(WARRANT SIX)

STEPHEN MCDANIEL, through counsel, requests that this Court exclude any evidence gathered by law enforcement during a search of Stephen McDaniel's apartment, which occurred sometime around 2:12 p.m. on Wednesday, July 20, 2011. The acquisition of any evidence, which includes observations by police while in the apartment, violated Stephen's expectation of privacy, protected by the United States Constitution, Fourth Amendment, applied to the states through the Fourteenth Amendment, and the Georgia Constitution, Article I, Section I, Paragraph XIII. In addition, Stephen makes this motion pursuant to O.C.G.A. § 17-5-30. In support of this Motion, Stephen shows the following:

I. Factual Background

After conducting two warrantless searches of Stephen's apartment and a warrantless search of his person, both of which are the subject of separate and distinct motions in this case, Detective David Patterson of the Macon Police Department applied for two search warrants for Stephen's apartment (warrants one and two). Detective Kenneth Chapman applied for another warrant (warrant 5) eleven days after the execution of those warrants. Detective Patterson then applied for this warrant eight days after that. Stephen's apartment, number four, is located at 1058 Georgia Avenue, Macon, Georgia. Based upon a sworn affidavit and other sworn oral testimony, Judge Tilman E. Self, III, issued this search warrant for Stephen's apartment (warrant five).

This warrant authorized law enforcement to search the location for, and subsequently seize, any "digital storage device and jewelry items, which may contain/are evidence of crime of Murder, in violation of O.C.G.A. §16-5-1 and Burglary in violation of O.C.G.A. §16-7-1." This

warrant was issued at 10:40 a.m. on July 20, 2011 and executed at 2:12 p.m. of the same day.¹

II. Argument

A. The Information the Warrant Is Based Upon Is the Fruit of Illegal Warrantless Searches and, as Such, Subjects All Evidence Seized As A Result to Exclusion

The United States Supreme Court in *Weeks v. United States*, 232 U.S. 383 (1914) adopted what has become known as the “exclusionary rule” as a remedy for violations of the Fourth Amendment to the United States Constitution. The exclusionary rule bars the use of unconstitutionally seized evidence at trial. The Court found this rule necessary to prevent the reduction of the Fourth Amendment to a mere “form of words.” *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). The Supreme Court incorporated the exclusionary rule of the Fourth Amendment to the states through the Fourteenth Amendment in *Rochin v. California*, 342 U.S. 165 (1952) and *Mapp v. Ohio*, 367 U.S. 643 (1961).

When the exclusionary rule applies it extends to both the direct products of governmental illegality and its secondarily-derived

¹ These times come from the time of issuance and execution from the warrant itself and the warrant return.

evidence; commonly referred to as the "fruit of the poisonous tree."

Nardone v. United States, 308 U.S. 338, 341 (1939).

Here, this warrant is the fruit of illegal warrantless searches of Stephen's apartment and person. These searches are the subject of other motions in this case. Information gathered during these warrantless intrusions upon Stephen's home and body served as the basis for the warrant at issue here and, as such, all information gathered as a result of the illegal searches is tainted, irreparably, by the illegality and should be excluded. Additionally, observations by law enforcement during the execution of warrants one, two, and five led to the request for and issuance of this warrant (warrant six). Warrants one, two, and five are the subject of other motions in this case and, should those warrants be excluded, all observations from the execution of those warrants, which served, partially, as the basis for warrant six, should be excluded as well as the fruits of illegal police conduct.

B. Law Enforcement Exceeded the Scope of the Search Warrant by Seizing Items Not Listed on the Warrant, Thus Exposing Those Items to the Taint of Illegality, and Exposing All Items Later Seized as a Result to Exclusion as the Fruits of the Illegal Seizure

The Fourth Amendment provides as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The particularity requirement within the Fourth Amendment was important to the drafters of the Bill of Rights to protect citizens from the dangers of general warrants and writs of assistance which were common under the rule of the English Crown during the colonial period in America. Warrants must be particular as to the things to be seized so that "nothing is left to the discretion of the officer executing the warrant." *Marron v. United States*, 275 U.S. 192, 196 (1927). Particularity in the warrant assures law enforcement and the property owner that any approved seizure of property is constitutional. *Groh v. Ramirez*, 540 U.S. 551 (2004).

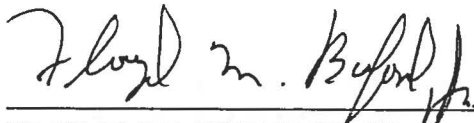
A search warrant that describes the things to be seized with sufficient particularity authorizes law enforcement officers to search wherever within the premises the items subject to seizure can be found. *United States v. Ross*, 456 U.S. 798, 820-21 (1982). However, the types of items seized must comport with the types of items authorized to be

seized in the warrant. Other items not mentioned in the warrant may be seized under the "plain view" doctrine "only where it is immediately apparent to the police that they have evidence before them." *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). "Immediately apparent" means that police have probable cause to seize the item in plain view. *Arizona v. Hicks*, 480 U.S. 321 (1987).


Here, Macon Police Department officers seized a number of items during the execution of this warrant that do not fit within any category of item authorized for seizure in the warrant. This warrant states seizable types of items with the requisite particularity, yet officers executing the warrant exceeded that scope and collected items that do not fit within any reasonable interpretation of the subject matter of the warrant. While law enforcement can seize items in plain view if there is probable cause to do so, none of the items seized here, that lie outside the scope of the warrant, are "immediately apparent" as evidence in the crime of murder. Since law enforcement seized items that lie outside the subject matter of the warrant and a warrantless (plain view) seizure was not permissible under the circumstances, these items, and the fruits of their illegal seizure, should be excluded.

Thus, the Defendant moves this Court to exclude from evidence in this case all items seized as a result of this warrant as the fruits of prior unconstitutional, warrantless searches or, in the alternative, exclude all items seized during the execution of this warrant that lie outside the scope of items to be seized in the warrant.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



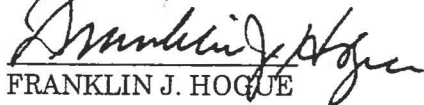
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.


FRANKLIN J. HOGUE

HOGUE & HOGUE
341 Third Street
P.O. Box 1795
Macon, GA 31202
478-750-8040
478-738-0859 (fax)

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

1058 Georgia Avenue, Apartment #4
Macon, Bibb County, Georgia

APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

The undersigned hereby applies for issuance of a Search Warrant. The applicant swears that he has probable cause to believe that digital storage devices and jewelry items, which may contain/are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1 and Burglary in violation of O.C.G.A. §16-7-1., are concealed in a certain location, to-wit: 1058 Georgia Avenue, Apt. #4, Macon, Georgia. This Apartment building is a two-story apartment building with stucco-type finish. There is an awning over a patio porch on the building. The building contains eight apartments. If one is standing on Georgia Avenue and facing the building, Apartment #4 is the top right-hand apartment. It bears the number four on the door.

The applicant, based upon facts and circumstances contained in the affidavit of Detective David Patterson, which is attached to this Application and made a part of it by reference, shows probable cause exists to cause a search warrant to issue requiring search be made of the above-named location for the above-named evidence.

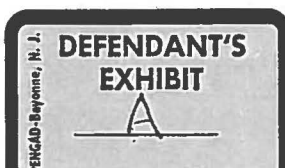
This Application is made for the purpose of enforcement of the criminal laws of this State and not for the purpose of any personal, civil, or property rights. The applicant is an officer of the law with the Macon Police Department.

Respectfully submitted, this 20 day of July, 2011.

[Signature] #13
APPLICANT

Sworn to and subscribed before me, this 20 day of July, 2011,
at 10:40 o'clock A.m.

[Signature]
TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit



000637

EXHIBIT A

AFFIDAVIT

My name is Detective David Patterson and I am currently employed by the Macon Police Department. I am a P.O.S.T. Certified Law Enforcement Officer for the State of Georgia. I have been employed by the Macon Police Department since 1996. I am assigned to the Criminal Investigations Division investigating violent crimes. I have been assigned to the violent crimes division since 2001. Prior to working in the violent crimes division, I have worked as a patrol officer answering calls for service from residences within the community. I have investigated misdemeanor crimes, traffic accidents, felony crimes, and assisted in preventing crimes. I have been a field-training officer; training newly hired officers once they have completed their basic mandate course. I have received specialized training in gang investigation, domestic violence, criminal investigation, criminal sexuality, homicide investigations, writing search warrants and affidavits. I have received over five hundred hours of training. I have investigated numerous misdemeanor and felony crimes, including homicides, robberies, rapes, aggravated assaults, and many others. I have participated in multi-jurisdictional prosecutions. I have assisted other officers and detectives writing and executing search warrants. I have interviewed and interrogated hundreds of victims, witnesses, and suspects. I have testified in municipal court, magistrate court, state court, and superior court.

The following is the basis for finding probable cause so as to authorize the search warrant for which I have applied: On June 30, 2011, Mercer Police Department received a call to respond to 1058 Georgia Avenue regarding a missing person, Lauren Giddings, a resident in Apartment #2 at said location. Upon arrival, Officer Vince Broccolo met with the complainant, Ashley Morehouse. Ms. Morehouse advised Officer Broccolo that her friend, Ms. Giddings, was missing and would not answer the front door to Ms. Giddings' apartment. Complainant stated that she entered Ms. Giddings apartment with a hidden key and could not locate Ms. Giddings. Officer Broccolo then

contacted the Macon Police Department ("MPD") and notified them of the situation. MPD Officer Copeland responded to the scene and met with Complainant and several other concerned friends. Later that same morning, at approximately 9:15 a.m., I, along with, SGT Kenneth Scott Chapman, received the report of the missing person and we proceeded to the location. We were met upon arrival by the original Complainant and SGT Steve Gatlin, with the MPD Crime Lab.

While standing on the outside of the apartment complex, we smelled a strong odor coming from the garbage containers and observed several flies swarming around the trash containers. I immediately recognized this odor to be that of dead person, which I both know and recognize from my training and experience having investigated homicides previously. I notified SGT Gatlin, who opened the garbage containers, and he found two large black garbage bags. At this time, SGT Gatlin opened one of the trash bags and discovered that it contained what appeared to be a human female torso with what appeared to be a superficial cut or wound to the chest. The human torso did not have a head, arms, or legs.

SGT Chapman and I then began to interview neighbors. We knocked on the door of Apartment #4 and Stephen McDaniel came to the door and we talked with him. We asked McDaniel if he would come to the Detective Bureau and give a statement regarding his neighbor Lauren Giddings. He agreed to come. I, Detective Patterson, interviewed McDaniel at the Detective Bureau at which time I saw a red mark on the left side of his face near his nose. I asked him if he had any other marks on his body. He lifted his t-shirt and revealed what appeared to be two fresh scratch marks on the right side of his stomach. These scratch marks were approximately three to five inches in length. During the interview of Stephen McDaniel, I asked him for consent to search his apartment, which he granted. McDaniel gave oral consent which was recorded on video.

We then left the Detective Bureau and proceeded back to Georgia Avenue. When we arrived at McDaniel's apartment, which is apartment #4, he unlocked the door and allowed me and SGT Chapman to go in with him and look around. While inside the apartment, I observed a large "Samurai-type" sword in McDaniel's bedroom and a large knife with a blade in excess of a twelve inches also in his bedroom. I also observed numerous firearms, including what appeared to be a semi-automatic rifle and a semi-automatic handgun lying on the bed. I also saw a large cooler sitting near the front door. We then left the apartment, and McDaniel, who was not in custody, left our presence.

Subsequently, McDaniel returned to the Georgia Avenue area and struck up a conversation with MPD detectives and DA's Office personnel who were on the scene, including DA's Investigator Jim McDonald. In the presence of SGT Chapman, Investigator McDonald asked McDaniel whether he would consent to allow investigators from the Macon Police Department Crime Scene unit to enter his apartment. McDaniel agreed that he would allow this, provided he could be present. McDaniel then admitted officers back into Apartment #4.

Because of the torso being found in the garbage container and the necessity to search for additional body parts, Macon Police Department personnel had contacted Tracy Sargent, who handles two human remains detection (HRD) dogs, commonly known as a "cadaver dogs", called Cinco and Chance. HRD canines are trained to detect the odor of human remains, which may include not only corpses but also blood, semen, and other body fluids or tissues, for a period of up to several years after said specimens were in a particular location. Cinco has been certified on the local, state, national and international levels for HRD for the last five years. Chance has been certified on the local and state level for HRD for the last seven months. Ms. Sargent has been handling HRD canines for the last 18 years and is a handler, trainer, evaluator, master trainer, and subject matter expert in the training and handling of HRD canines.

In the presence of SGT Kenneth Scott Chapman, SGT Steve Gatlin, and DA Investigator McDonald, and McDaniel, Ms. Sargent utilized her HRD canines to sniff the inside of McDaniel's apartment. Ms. Sargent has reported to me that she first utilized Cinco to sniff the inside of McDaniel's apartment (#4) and then utilized Chance to sniff the inside of McDaniel's apartment. Both Cinco and Chance separately alerted on the scent of human remains in the back bedroom and bathroom of McDaniel's apartment.

Ms. Sargent also utilized Cinco and Chance to perform separate searches of Apartment #1, which is located in the same building, directly below Apartment #2, which is Lauren Giddings apartment. Cinco and Chance both alerted on the scent of human remains in the bathroom of Apartment #1 and the back wall of the living room of Apartment #1. According to MPD Crime Scene Investigator Amy Wheeler, the wall where the HRD canines alerted appeared to have been freshly painted in some sections, and there were some small stains and smears which appeared to be consistent with dried blood.

The human torso found in the garbage dumpster was submitted to the Office of the Medical Examiner for examination. Dr. Gaffney Kraft was the medical examiner who performed the post-mortem examination. Dr. Gaffney Kraft reported that the torso was clad in cotton shorts with no underwear or shirt. Dr. Gaffney Kraft located a few hairs which appeared to be brown in color and several inches long on the abdomen, and a clump of hair on the back of the shorts which appeared to be made up of a mixture of brown and blonde hair which appeared to be saturated in decomposition fluid. Stephen McDaniel has long shoulder-length brown hair. Lauren Giddings had blonde hair.

At approximately 6:00 p.m. on June 30, 2011, MPD Crime Scene Investigators performed a "luminol examination" of the bathroom in Lauren Giddings' apartment, which is Apartment #2 of the same building located at 1058 Georgia Avenue. This examination revealed

the possibility of substantial quantities of blood both around the drain of the bathroom tub and splattered on the walls of the tub and above the tub to a height of approximately four feet.

Stephen McDaniel identified a certain four-door black Geo Prism, bearing Georgia tag number BTL2870, which is parked outside the apartments, as being his vehicle. A visual inspection from the outside of this car reveals large dark stains possibly consistent in appearance with blood on both the front and rear seats. The Vehicle Identification Number (VIN) of this car is 1Y1SK5281VZ443940. A check of the tag registration reveals that the vehicle is registered to Stephen McDaniel at 1058 Georgia Avenue, Apt. #4.

After discovering the above evidence, McDaniel was returned to the MPD Detective Bureau for additional questioning. During the course of this interview McDaniel stated that he stays on his computer while at home and uses the same as his main source of communication. He stated that he frequently visits sites featuring pornography and has ordered guns, knives and ammunition from the internet. During the initial survey of McDaniel's apartment, I observed a laptop computer as well as what appeared to be a brand new digital camera. Based upon my training, I am aware that often individuals involved in ritualistic or sexually-motivated killings will photograph the body or otherwise record the event for future enjoyment.

During this additional questioning, McDaniel made statements to MPD LT Carl Fletcher regarding the fact that he was a virgin and was saving himself for marriage. LT Fletcher became aware that several condoms were located inside McDaniel's apartment and asked McDaniel why he would need condoms if he was a virgin and had no plans to engage in sexual intercourse. At this time McDaniel stated that he had stolen the condoms. Two of the condoms were stolen from his sister, the additional condoms were stolen from other apartments located at 1058 Georgia Avenue.

On July 1, 2011, while serving a search warrant issued on the same date, Officers with the Macon Police Department located two keys inside Stephen McDaniel's apartment at 1058 Georgia Avenue, Apartment #4. One of the keys located was determined to be a "master key" that opens every door located on the property at 1058 Georgia Avenue. Stephen McDaniel was not authorized to be in possession of said key. The second key was determined to be a key to 1058 Georgia Avenue Apartment #2, the victim's apartment. Stephen McDaniel was not authorized to be in possession of said key.

On Tuesday, July 12, 2011, I received information from the FBI Crime Lab Trace Unit regarding initial results of trace evidence testing on items of evidence collected in this case. The initial results indicate that certain blue fiber(s) found on the shorts being worn by the victim at the time her torso was located are similar with blue fiber(s) found on a grey t-shirt found inside 1058 Georgia Avenue, Apartment #4. Therefore, it is reasonable to conclude that the common source of the similar fibers is currently located in 1058 Georgia Avenue, Apartment #4.

On Tuesday, July 12, 2011, while officers were executing the search warrant granted on that date for materials containing blue fibers, digital storage devices were located that were not seized during the execution of a previous search warrant issued July 1, 2011 for said items. Officers also located several rings that do not appear to belong to McDaniel based on the inscriptions on the interior of the ring bands and thus may be stolen and may be evidence of additional Burglaries.

Based on all of the above, I believe that probable cause exists to search the apartment of Stephen McDaniel located at 1058 Georgia Avenue Apartment #4 for any digital storage device and jewelry items, which may contain/are evidence of the crime of Murder, in violation of

This 20th day of JULY, 2011

Sworn to and subscribed before me, this 20 day of July, 20 11
at 10:40 o'clock A.m. ELM

00064

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

1058 Georgia Avenue, Apartment #4
Macon, Bibb County, Georgia

SEARCH WARRANT

To Detective David Patterson, applicant, and to any and all other peace officers for the State of Georgia, Greetings:

Based upon sworn affidavit made in writing before me, and based upon other sworn oral testimony, I find that probable cause exists which authorizes the issuance of a warrant to search a certain 1058 Georgia Avenue, Apt. #4, Macon, Georgia, for any digital storage device and jewelry items, which may contain/are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1 and Burglary in violation of O.C.G.A. §16-7-1..

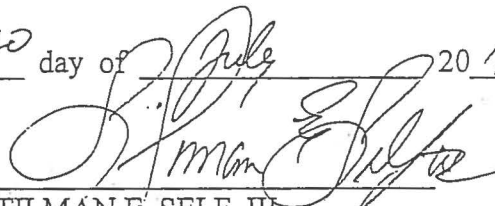
Upon the finding of such evidence pursuant to this Warrant officers are authorized to seize the evidence; provided that an accurate inventory of all property seized is made to this Court upon this Warrant's return.

Therefore, you are hereby commanded to search the location and seize the evidence herein named, leaving behind a copy of this warrant and a receipt of the property seized.

Pursuant to the Georgia Code, officers shall return this Warrant to this Court; the return must show the date and time of the warrant's execution, and must contain an inventory of property seized.

This Warrant shall be executed within ten days of its issuance, or, failing that, be returned to this Court and marked, "Not Executed."

Given under my hand and Seal this 20 day of July, 2011, at
10:40 o'clock A.m.


TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

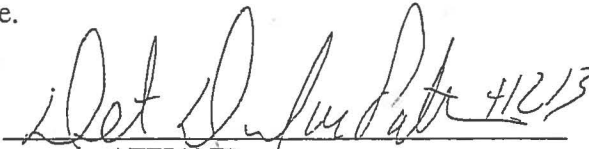
00064

RETURN

This warrant was executed at the named location at 2:12 o'clock P.M. On the 20th day of July 2011.

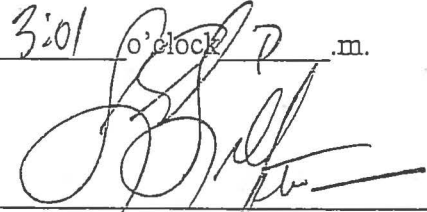
The following evidence was seized:

1. One Sony PS3 Game system and controller serial number CG512687546
2. One XBOX game system, red and black in color serial number 401687232805
3. Three XBOX controllers
4. One PS2 Game system serial number U3853719
5. One PS2 Game system controller
6. Three spools of compact discs
7. One black case containing CDR'S
8. One Lexis Nexus memory stick
9. One CD case with two discs
10. One Dell black bag containing a Kingston memory stick, power cords and DVD player insert.
11. Two Dell operating program discs
12. One PNY 4 GB memory stick
13. Two SanDisk (2GB each) SD cards
14. One black bag containing a 4 GB Kingston SD CARD
15. Mercer University black bag containing a gateway laptop computer model 450ROG serial number 0034165998, computer cords. Power cord, 11 compact discs, a floppy drive and 2 adult magazines.
16. One floppy disk (gray in color)
17. One Clipster camera and package.


AFFIANT

Sworn to and subscribed before me, this 1 day of Aug, 2011

At 3:01 o'clock P.m.


TILMAN E. Self, III
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

000646

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

FILED
CLERK'S OFFICE
2012 DEC 14 AM 10:55
DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

STATE OF GEORGIA

:

:

v.

:

INDICTMENT: 11-CR-67684

:

STEPHEN MCDANIEL

:

[2.12]

MOTION TO SUPPRESS THE SEARCH WARRANT
FOR DATA ON DIGITAL STORAGE DEVICES SEIZED FROM
1058 GEORGIA AVENUE, APARTMENT FOUR,
MACON, GEORGIA, ISSUED JULY 21, 2011, AT 4:22 P.M.
(WARRANT SEVEN)

STEPHEN MCDANIEL, through counsel, requests that this Court exclude any evidence gathered by law enforcement during a search of digital storage devices¹ seized from Stephen McDaniel's apartment, which occurred, on numerous instances, between Tuesday August 2, 2011 and Thursday August 18, 2011. The acquisition of any evidence, violated Stephen's expectation of privacy, protected by the United States Constitution, Fourth Amendment, applied to the states through the Fourteenth Amendment, and the Georgia Constitution, Article I, Section I, Paragraph XIII. In addition, Stephen makes this motion pursuant to

¹ For the ease of the reader, this Motion will refer to "digital storage devices" which is meant to include computers, cameras, cellular telephones, and digital storage devices; all types of digital storage devices previously seized in this case and the subject of warrant seven.

O.C.G.A. §§ 17-5-30 and 17-5-25. In support of this Motion, Stephen shows the following:

I. Factual Background

After conducting two warrantless searches of Stephen's apartment and a warrantless search of his person, both of which are the subject of separate and distinct motions in this case, Detective David Patterson of the Macon Police Department applied for two search warrants for Stephen's apartment (warrants one and two); one of which (warrant two) contained "digital storage devices" among the items to be seized. On July 20, 2011, Detective Patterson applied for another warrant (warrant six) that also authorized the seizure of "digital storage devices." Based upon a sworn affidavit and other sworn oral testimony, Judge Tilman E. Self, III, issued this search warrant for the data contained on digital storage devices seized from Stephen's apartment (warrants two and six).

This warrant (warrant seven) authorized law enforcement to search the "data contained in computers, cameras, cellular telephones and digital storage devices that were located and seized during previously authorized search warrants of 1058 Georgia avenue,

Apartment #4, the apartment of Stephen McDaniel, which contain and are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1 and Burglary in violation of O.C.G.A. §16-7-1." This warrant was issued at 4:22 p.m. on July 21, 2011 and executed on multiple instances from August 2 to August 18, 2011.²

II. Argument

A. The Information the Warrant Is Based Upon Is the Fruit of Illegal Warrantless Searches and, as Such, Subjects All Evidence Seized As A Result to Exclusion

The United States Supreme Court in *Weeks v. United States*, 232 U.S. 383 (1914) adopted what has become known as the "exclusionary rule" as a remedy for violations of the Fourth Amendment to the United States Constitution. The exclusionary rule bars the use of unconstitutionally seized evidence at trial. The Court found this rule necessary to prevent the reduction of the Fourth Amendment to a mere "form of words."

Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920). The Supreme Court incorporated the exclusionary rule of the Fourth

² These times come from the time of issuance and execution from the warrant itself and the warrant return.

Amendment to the states through the Fourteenth Amendment in *Rochin v. California*, 342 U.S. 165 (1952) and *Mapp v. Ohio*, 367 U.S. 643 (1961).

When the exclusionary rule applies it extends to both the direct products of governmental illegality and its secondarily-derived evidence; commonly referred to as the "fruit of the poisonous tree."

Nardone v. United States, 308 U.S. 338, 341 (1939).

Here, this warrant is the fruit of illegal warrantless searches of Stephen's apartment and person. These searches are the subject of other motions in this case. Information gathered during these warrantless intrusions upon Stephen's home and body served as the basis for the warrant at issue here and, as such, all information gathered as a result of the illegal searches is tainted, irreparably, by the illegality and should be excluded. Additionally, observations by law enforcement during the execution of warrants one, two, five, and six led to the request for and issuance of this warrant (warrant seven). Warrants one, two, five, and six are the subject of other motions in this case and, should those warrants be excluded, all observations from the execution of those warrants, which served, partially, as the basis for warrant seven, should be excluded as well as the fruits of illegal police conduct.

B. Warrant Seven is Void Due to Staleness

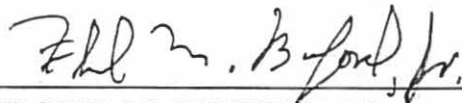
O.C.G.A. §17-5-25 governs the execution of search warrants in Georgia. It reads,

The search warrant shall be executed within ten days from the time of issuance....Any search warrant not executed within ten days from the time of issuance shall be void and shall be returned to the court of the judicial officer issuing the same as "not executed."

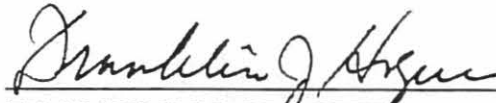
Here, all searches of the digital storage devices seized from Stephen's apartment occurred outside the 10-day statutory limit. These searches, therefore, were carried out without a warrant and all information derived from those searches is subject to exclusion.

Thus, the Defendant moves this Court to exclude from evidence in this case all items seized as a result of this warrant as the fruits of prior unconstitutional, warrantless searches or, in the alternative, exclude all evidence derived from the search because the search occurred outside the statutory requirement for time to execute a search warrant.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



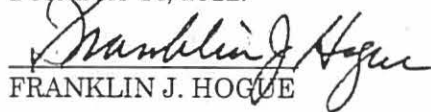
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.


FRANKLIN J. HOGUE

HOGUE & HOGUE
341 Third Street
P.O. Box 1795
Macon, GA 31202
478-750-8040
478-738-0859 (fax)

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

Items in Exhibit A
Located and Seized from:
Stephen McDaniel
1058 Georgia Avenue Apartment #4

APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

The undersigned hereby applies for issuance of a Search Warrant. The applicant swears that he has probable cause to believe that the data contained in computers, cameras, cellular telephones and all other digital storage media that were located and seized at 1058 Georgia Avenue Apartment #4, the Apartment of Stephen McDaniel, contain data and are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1 and Burglary in violation of O.C.G.A. §16-7-1. Said data is concealed and contained within the items specifically annotated in Exhibit A which is attached to this Application and made a part of it by reference.

The applicant, based upon facts and circumstances contained in the affidavit of Detective David Patterson, which is attached to this Application and made a part of it by reference, shows probable cause exists to cause a search warrant to issue requiring search be made of the above-named location for the above-named evidence.

This Application is made for the purpose of enforcement of the criminal laws of this State and not for the purpose of any personal, civil, or property rights. The applicant is an officer of the law with the Macon Police Department.

Respectfully submitted, this 21 day of July, 2011.

Det. D. L. Furuta #213
APPLICANT

Sworn to and subscribed before me, this 21 day of July, 2011.

at 4:22 o'clock P.m.

Tilman E. Self, III
TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit



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EXHIBIT A

ITEMS AUTHORIZED TO BE SEARCHED

RE: DIGITAL STORAGE DEVICES FROM STEPHEN MCDANIEL'S APARTMENT

1. One Dell Latitude D630 Laptop Computer-Service Tag #JZCCRG1, Silver and Gray in color
2. One WD External Storage Drive, WD P/N: WD6000H1U-00, Black in color
3. One Dynex mini memory card reader/writer, 10D19, Silver and Gray in color
4. One T-Mobile Nokia Cell Phone, Blue and Silver. Front of Phone is Silver with the "Nokia" at the top. Model 6010.
5. One Memorex USB 2.0GB Travel Drive, Gray in color
6. One Sony Playstation 2, Serial # U3853719
7. One Xbox System with Remote, Serial #401687232805, Black and Red in color
8. One Playstation 3, Serial #CG512687546
9. Three spools of Maxell CDs containing 25 CDs per spool
10. Lexus/Nexus Flash Drive, Silver and Red in color in a Silver case
11. One Black CD case containing the following 11 Memorex CDs:
 - Burn Files CD 1
 - Burn Files CD 2
 - Burn Files CD 3
 - Burn Files CD 4
 - Burn Files CD 5
 - Burn Files CD 6
 - Burn Files CD 7
 - Burn Files CD 8
 - Burn Files CD 9
 - The Punisher DVD
 - AMVs
12. One Clear CD case containing one large disk and one small Medal of Honor disk
13. One Clipster 4 in 1 Digital Camera, Green and Black with Operating Disk and USB Cable in package containing UPC Code 5774800026
14. One 1GB Flash Drive, White in color attached to a Black and Orange Mercer Lanyard
15. Two Dell Operation System CDs
16. One Dell DVD Drive Module, LBLP/N C3284-A00
17. One Sandisk 2GB SD Card, BE0636205013D, Blue-Red-White in Color
18. One Sandisk 2GB SD Card, BE0632905002B, Blue-Red-White in Color
19. One PNY 4GB USB Flash Drive in Package, UPC 5149241679
20. One FujiFilm MF2HD Floppy Disk Labeled "Hector PowerPoint by Stephen McDaniel"
21. One Kingston Technology 4GB SD Card with label on back of package marked SD4/4GBKR, on front of package in handwritten in blue ink is "McDaniel"
22. One Mac 1.44 Floppy Drive label marked EUS01E854, Serial #FYB04300839

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23. One CD case containing one Memorex CDR, White in color marked "Vanilla Sky"
24. One Office Depot CDR marked "Total Protect 2004"
25. One CD titled "Pinnacle Instant Video Album", Version 1.1, Label on back marked "7614235"
26. One Norton Antivirus 2004 CD, Label on back marked "34865-B23"
27. One Gateway Application CD, Label on back marked "7514331"
28. One Windows XP Operating CD, Label on back marked "7514796"
29. One Microsoft Office Standard Edition CD, Product Key VM24M-9M268-989WR-77M9K-WQ8FQ
30. One AOL 9.0 CD, Label on back marked 7514022
31. One HP PSC CD for HP Office Jet 6100 Series
32. One GW Engineering CD
33. One Gateway Laptop, Model #450ROG, Serial #0034165998, Gray in color
34. One Toshiba Portege Laptop, Model #7020CT, Serial #39547476R-3, connected to Toshiba Docking Station, Serial #Z9012876, Gray in color
35. One Canon Powershot SX130IS, Serial #232603031023
36. One FujiFilm MF2HD Floppy Disk, numbers on back are 2251001A
37. One Memorex 2GB Travel Drive attached to one Memorex Lanyard
38. One CD entitled "Club Confidential Slammin Amateurs"
39. Three Nexxtech DVDs titled "Exosquad 1 of 3, Exosquad 2 of 3, Exosquad 3 of 3"

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EXHIBIT B

AFFIDAVIT

My name is Detective David Patterson and I am currently employed by the Macon Police Department. I am a P.O.S.T. Certified Law Enforcement Officer for the State of Georgia. I have been employed by the Macon Police Department since 1996. I am assigned to the Criminal Investigations Division investigating violent crimes. I have been assigned to the violent crimes division since 2001. Prior to working in the violent crimes division, I have worked as a patrol officer answering calls for service from residence within the community. I have investigated misdemeanor crimes, traffic accidents, felony crimes, and assisted in preventing crimes. I have been a field-training officer; training newly hired officers once they have completed their basic mandate course. I have received specialized training in gang investigation, domestic violence, criminal investigation, criminal sexuality, homicide investigations, writing search warrants and affidavits. I have received over five hundred hours of training. I have investigated numerous misdemeanor and felony crimes, including homicides, robberies, rapes, aggravated assaults, and many others. I have participated in multi-jurisdictional prosecutions. I have assisted other officers and detectives writing and executing search warrants. I have interviewed and interrogated hundreds of victims, witnesses, and suspects. I have testified in municipal court, magistrate court, state court, and superior court.

The following is the basis for finding probable cause so as to authorize the search warrant for which I have applied: On June 30, 2011, Mercer Police Department received a call to respond to 1058 Georgia Ave. regarding a missing person, Lauren Giddings, a resident Apartment #2 at said location. Upon arrival, Officer Vince Broccolo met with the complainant, Ashley Morehouse. Ms. Morehouse advised Officer Broccolo that her friend, Ms. Giddings, was

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missing and would not answer the front door to Ms. Giddings' apartment. Complainant stated that she entered Ms. Giddings apartment with a hidden key and could not locate Ms. Giddings. Officer Broccolo then contacted the Macon Police Department ("MPD") and notified them of the situation. MPD Officer Copeland responded to the scene and met with Complainant and several other concerned friends. Later that same morning, at approximately 9:15 a.m., I, along with, SGT Kenneth Scott Chapman, received the report of the missing person and we proceeded to the location. We were met upon arrival by the original Complainant and SGT Steve Gatlin, with the MPD Crime Lab.

While standing on the outside of the apartment complex, we smelled a strong odor coming from the garbage containers and observed several flies swarming around the trash containers. I immediately recognized this odor to be that of dead person, which I both know and recognize from my training and experience having investigated homicides previously. I notified SGT Gatlin, who opened the garbage containers, and he found two large black garbage bags. At this time, SGT Gatlin opened one of the trash bags and discovered that it contained what appeared to be a human female torso with what appeared to be a superficial cut or wound to the chest. The human torso did not have a head, arms, or legs.

SGT Chapman and I then began to interview neighbors. We knocked on the door of Apartment #4 and Stephen McDaniel came to the door and we talked with him. We asked McDaniel if he would come to the Detective Bureau and give a statement regarding his neighbor Lauren Giddings. He agreed to come. I, Detective Patterson, interviewed McDaniel at the Detective Bureau at which time he saw a red mark on the left side of his face near his nose. I asked him if he had any other marks on his body. He lifted his t-shirt and revealed what appeared to be two fresh scratch marks on the right side of his stomach. These scratch marks

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were approximately three to five inches in length. During the interview of Stephen McDaniel, I asked him for consent to search his apartment, which he granted. McDaniel gave oral consent which was recorded on video.

We then left the Detective Bureau and proceeded back to Georgia Avenue. When we arrived at McDaniel's apartment, which is apartment #4, he unlocked the door and allowed me, Detective Patterson, to go in with him and look around. While inside the apartment, I observed a large "Samurai-type" sword in McDaniel's bedroom and a large knife with a blade in excess of a foot long also in his bedroom. I also observed numerous firearms, including what appeared to be a semi-automatic rifle and a semi-automatic handgun lying on the bed. I also saw a large cooler sitting near the front door. We then left the apartment, and McDaniel, who was not in custody, left our presence.

Subsequently, McDaniel returned to the Georgia Avenue area and struck up a conversation with MPD detectives and DA's Office personnel who were on the scene, including DA's Investigator Jim McDonald. In the presence of SGT Chapman, Investigator McDonald asked McDaniel whether he would consent to allow investigators from the Macon Police Department Crime Scene unit to enter his apartment. McDaniel agreed that he would allow this, provided he could be present. McDaniel then admitted officers back into Apartment #4.

Because of the torso being found in the garbage container and the necessity to search for additional body parts, Macon Police Department personnel had contacted Tracy Sargent, who handles two human remains detection (HRD) dogs, commonly known as a "cadaver dogs", called Cinco and Chance. HRD canines are trained to detect the odor of human remains, which may include not only corpses but also blood, semen, and other body fluids or tissues, for a period of up to several years after said specimens were in a particular location. Cinco has been certified

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on the local, state, national and international levels for HRD for the last five years. Chance has been certified on the local and state level for HRD for the last seven months. Ms. Sargent has been handling HRD canines for the last 18 years and is a handler, trainer, evaluator, master trainer, and subject matter expert in the training and handling of HRD canines. HRD canines are trained to detect the odor of human remains, which may include not only corpses but also blood, semen, and other body fluids or tissues.

In the presence of SGT Kenneth Scott Chapman, SGT Steve Gatlin, and DA Investigator McDonald, and McDaniel, Ms. Sargent utilized her HRD canines to sniff the inside of McDaniel's apartment. Ms. Sargent has reported to me that she first utilized Cinco to sniff the inside of McDaniel's apartment (#4) and then utilized Chance to sniff the inside of McDaniel's apartment also. Both Cinco and Chance separately alerted on the scent of human remains in the back bedroom and bathroom of McDaniel's apartment.

Ms. Sargent also utilized Cinco and Chance to perform separate searches of Apartment #1, which is located in the same building, directly below Apartment #2, which is Lauren Giddings apartment. Cinco and Chance both alerted on the scent of human remains in the bathroom of Apartment #1 and the back wall of the living room of Apartment #1. According to MPD Crime Scene Investigator Amy Wheeler, the wall where the HRD canines alerted appeared to have been freshly painted in some sections, and there were some small stains and smears which appeared to be consistent with dried blood.

The human torso found in the garbage dumpster was submitted to the Office of the Medical Examiner for examination. Dr. Gaffney Kraft was the medical examiner who performed the post-mortem examination. Dr. Gaffney Kraft reported that the torso was clad in cotton shorts with no underwear or shirt. Dr. Gaffney Kraft located a few hairs which appeared to be brown in color and several inches long on the abdomen, and a clump of hair on the back of

the shorts which appeared to be made up of a mixture of brown and blonde hair which appeared to be saturated in decomposition fluid. Stephen McDaniel has long shoulder-length brown hair. Lauren Giddings had blonde hair.

At approximately 6:00 p.m. on June 30, 2011, MPD Crime Scene Investigators performed a "luminol examination" of the bathroom in Lauren Giddings' apartment, which is Apartment #2 of the same building located at 1058 Georgia Avenue. This examination revealed the possibility of substantial quantities of blood both around the drain of the bathroom tub and splattered on the walls of the tub and above the tub to a height of approximately four feet.

Stephen McDaniel identified a certain four-door black Geo Prism, bearing Georgia tag number BTL2870, which is parked outside the apartments, as being his vehicle. A visual inspection from the outside of this car reveals large dark stains possibly consistent in appearance with blood on both the front and rear seats. The Vehicle Identification Number (VIN) of this car is 1Y1SK5281VZ443940. A check of the tag registration reveals that the vehicle is registered to Stephen McDaniel at 1058 Georgia Avenue, Apt. #4.

After discovering the above evidence, McDaniel was returned to the MPD Detective Bureau for additional questioning. During the course of this interview McDaniel stated that he stays on his computer while at home and uses the same as his main source of information and communication. He stated that he frequently visits sites featuring pornography and has ordered guns, knives and ammunition from the internet. During the initial survey of McDaniel's apartment, I observed a laptop computer as well as what appeared to be a brand new digital camera. Based upon my training, I am aware that often individuals involved in ritualistic or sexually-motivated killings will photograph the body or otherwise record the event for future enjoyment. Further, I am aware that individuals that commit this type of crime often "build up"

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to the commission of said crimes by talking with other individuals about said crimes and research information about the same.

During this additional questioning, McDaniel made statements to MPD LT Carl Fletcher regarding the fact that he was a virgin and was saving himself for marriage. LT Fletcher became aware that several condoms were located inside McDaniel's apartment and asked McDaniel why he would need condoms if he was a virgin and had no plans to engage in sexual intercourse. At this time McDaniel stated that he had stolen the condoms. Two of the condoms were stolen from his sister, the additional condoms were stolen from other apartments located at 1058 Georgia Avenue.

During the course of our investigation SGT Chapman was contacted by a former roommate of McDaniel. This individual shared a dorm room with McDaniel during the fall of 2007 while the two were students at Mercer pursuing their undergraduate degrees. The roommate related the following information regarding conversations he had with McDaniel during that time:

He's a self-proclaimed psychopath. He proclaimed often that he has no conscience and was incapable of feeling emotion. He talked almost nightly about how he would go about the perfect murder. He would wear shoes that were too small, he would do something to make him appear bald (so that people wouldn't point him out because of his big hair), he detailed different scenarios all the time. In fact, I was scared sometimes. That said, Stephen liked and trusted me and I knew it. That's why I felt safe enough to stay where I was. I couldn't pick my own lock in my room. I tried several times, just to see if I could do it. Stephen could do it in under 10 seconds. He demonstrated it to me once just to show how easily he could get to me if he wanted, then grinned. When I responded that I was twice his size, he told me he would use chloroform so that it would not matter how big I was.

What Stephen relishes is power. He'll tell you (you don't have to ask him). Everything he does is the result of a power play. He is an odd duckling who looks weak, but has one of the sharpest minds I have ever seen. Stephen said if he killed someone, he'd do it in a way to establish dominance over them. He always said he wanted to feel the power of having someone's life in his hands. He said he wanted them to beg, and then to take it.

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I'm not sure what he did here, but he once said if he did kill someone he'd dismember them, soak them somehow, then scatter the parts through the woods so that no one would ever find them. He was convinced he was smarter than everyone else, and often bragged that if he did murder someone, that he'd never get caught.

When I heard the news about the murder in Macon and heard that Stephen was somehow involved I watched the interviews he gave to the news media at the scene. While watching one particular interview it struck me that Stephen's tone of voice, demeanor, and hand movements were not Stephen's normal mannerisms but instead nearly mirrored dialogue which he gave during a theater performance when we were both undergraduates at Mercer University.

I also recalled when seeing this he informed me that he had no interest in the theater but wanted to test himself to see if he was believable when telling a story.

Based upon my training and experience, I am aware that persons interested in committing the "perfect murder" often conduct research into how best to accomplish such an act and often make lists or elaborate plans regarding how they are going to commit the crime. I believe that information regarding the search for and information regarding the specific plans of this crime are located on the items described in Exhibit A.

On July 1, 2011, while serving a search warrant issued on the same date, Officers with the Macon Police Department located two keys inside Stephen McDaniel's apartment at 1058 Georgia Avenue, Apartment #4. One of the keys located was determined to be a "master key" that opens every door located on the property at 1058 Georgia Avenue. Stephen McDaniel was not authorized to be in possession of said key. The second key was determined to be a key to 1058 Georgia Avenue Apartment #2, the victim's apartment. Stephen McDaniel was not authorized to be in possession of said key.

On Tuesday, July 12, 2011, I received information from the FBI Crime Lab Trace Unit regarding initial results of trace evidence testing on items of evidence collected in this case. The initial results indicate that certain blue fiber(s) found on the shorts being worn by the victim at

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the time her torso was located are similar with blue fiber(s) found on a grey t-shirt found inside 1058 Georgia Avenue, Apartment #4. Therefore, it is reasonable to conclude that the common source of the similar fibers is currently located in 1058 Georgia Avenue, Apartment #4.

On Tuesday, July 12, 2011, while officers were executing the search warrant granted on that date for materials containing blue fibers, digital storage devices were located that were not seized during the execution of a previous search warrant issued July 1, 2011 for said items. Officers also located several rings that do not appear to belong to McDaniel based on the inscriptions on the interior of the ring bands and thus may be stolen and may be evidence of additional Burglaries.

SPECIFICS REGARDING THE SEIZURE AND SEARCHING
OF COMPUTER SYSTEMS

Based on my own experience and consultation with other officers who have been involved in the search of computers and retrieval of data from computer systems and related peripherals, and computer media, there are several reasons why a complete search and seizure of information from computers often requires seizure of all electronic storage devices, as well as all related peripherals, to permit a thorough search later by qualified computer forensic agents or experts in a laboratory or other controlled environment:

- a. Computer storage devices, such as hard disks, diskettes, tapes, laser disks, compact discs, and DVDs, can store the equivalent of hundreds of thousands of pages of information. Additionally, when an individual seeks to conceal information that may constitute criminal evidence, that individual may store the information in random order with deceptive file names. As a result, it may be necessary for law enforcement authorities performing a search to examine all the stored data to determine which particular files are evidence or instrumentalities of criminal activity. This review and sorting process can take weeks or months, depending on the volume of data stored, and would be impossible to attempt during a search on site; and
- b. Searching computer systems for criminal evidence is a highly technical process, requiring specialized skill and a properly controlled environment. The

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vast array of computer hardware and software available requires even those who are computer experts to specialize in some systems and applications. It is difficult to know before a search what type of hardware and software are present and therefore which experts will be required to analyze the subject system and its data. In any event, data search protocols are exacting scientific procedures designed to protect the integrity of the evidence and to recover even hidden, erased, compressed, password-protected, or encrypted files. Since computer evidence is extremely vulnerable to inadvertent or intentional modification or destruction (both from external sources or from destructive code imbedded in the system as a booby trap), a controlled environment is essential to its complete and accurate analysis.

Based on my own experience and my consultation with other officers who have been involved in computer searches, searching computerized information for evidence or instrumentalities of a crime often requires the seizure of all of a computer system's input and output peripheral devices, related software, documentation, and data security devices (including passwords) so that a qualified computer expert can accurately retrieve the system's data in a laboratory or other controlled environment. There are several reasons that compel this conclusion:

a. The peripheral devices that allow users to enter or retrieve data from the storage devices vary widely in their compatibility with other hardware and software. Many system storage devices require particular input/output devices in order to read the data on the system. It is important that the analyst be able to properly re-configure the system as it now operates in order to accurately retrieve the evidence listed above. In addition, the analyst needs the relevant system software (operating systems, interfaces, and hardware drivers) and any applications software which may have been used to create the data (whether stored on hard drives or on external media), as well as all related instruction manuals or other documentation and data security devices.

b. In order to fully retrieve data from a computer system, the analyst also needs all magnetic storage devices, as well as the hard drives. Further, the analyst again needs all the system software (operating systems or interfaces, and hardware drivers) and any applications software which may have been used to create the data (whether stored on hard drives or on external media) for proper data retrieval.

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It is requested that the Macon Police Department and the FCS of the Georgia Bureau of Investigation be granted authorization to search for, seize and analyze the relevant data from the computer related items described in the application / order of this search warrant.

Based on all of the above, I believe that probable cause exists to search the contents of the computers, cameras and digital storage devices of Stephen McDaniel that were located and seized by the Macon Police Department at 1058 Georgia Avenue Apartment #4 during search warrants and are currently being stored at the Macon Police Department Crime Lab located at 2654 Houston Avenue, Macon, Georgia, which contain and are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1 and Burglary in violation of O.C.G.A. §16-7-1. All of the above information is true and correct to the best of my knowledge and belief.

This 21 day of July, 2011

Det. [Signature] #1213
AFFIANT

Sworn to and subscribed before me, this 21 day of July, 2011,

at 4:22 o'clock P.m.

[Signature]
TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

000670

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

Items in Exhibit A
Located and Seized from:
Stephen McDaniel
1058 Georgia Avenue Apartment #4

SEARCH WARRANT

To Detective David Patterson, applicant, and to any and all other peace officers for the State of Georgia, Greetings:

Based upon sworn affidavit made in writing before me, and based upon other sworn oral testimony, I find that probable cause exists which authorizes the issuance of a warrant to search the data contained in computers, cameras, cellular telephones and digital storage devices that were located and seized during previously authorized search warrants at 1058 Georgia Avenue Apartment #4, the Apartment of Stephen McDaniel, which contain and are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1 and Burglary in violation of O.C.G.A. §16-7-1.

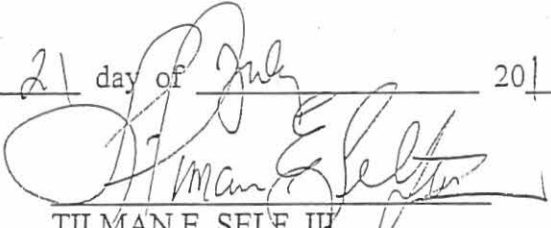
Upon the finding of such evidence pursuant to this Warrant officers are authorized to seize the evidence; provided that an accurate inventory of all property seized is made to this Court upon this Warrant's return.

Therefore, you are hereby commanded to search the location and seize the evidence herein named, leaving behind a copy of this warrant and a receipt of the property seized.

Pursuant to the Georgia Code, officers shall return this Warrant to this Court; the return must show the date and time of the warrant's execution, and must contain an inventory of property seized.

This Warrant shall be executed within ten days of its issuance, or, failing that, be returned to this Court and marked, "Not Executed."

Given under my hand and Seal this 21 day of July 2011, at
4:22 o'clock P.m.


TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

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RETURN

I received the within search warrant on July 21, 20 11 and
have executed it as follows: On _____, 20____
_____ at _____ o'clock _____ M.

The following evidence was seized:

See attached documents from GBI computer specialist Matthew Daniel.

[Handwritten mark: a large 'H' with a diagonal line through it]

Subscribed and sworn to and returned before me this 6 day of July, 20 12.

Let Sheriff Pat #212

[Handwritten signature of Tilman E. Self, III]

TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

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On Wednesday, August 3, 2011, FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of a Seagate 80.0 GB, serial number 5NH1BXJ8 internal hard drive which was removed from a Dell Latitude D630 serial number CYVHQG1 laptop. The hard drive is reflected as item 7 on GBI evidence receipt E-537029. This device belongs to LAUREN GIDDINGS. GIDDINGS is the victim of murder. STEPHEN MCDANIEL is suspected of committing the murder. The items were seized by City of Macon Police Department.

FCS Daniel connected the hard drive to a Dell XPS processing computer via a WiebeTech hardware write blocker. FCS Daniel then activated the write blocker and verified that the processing computer was able to recognize the hard drive. The hard drive was recognized. FCS Daniel then downloaded the forensic image to a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Dell Latitude D630 ITEM 7

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On Tuesday, August 2, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of Kingston 1GB, serial number E0FD-1813 thumb drive. The thumb drive is listed as item 17 on GBI evidence receipt E-537029. This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

FCS DANIEL connected the Kingston 1 GB thumb drive to a Dell XPS processing computer via a WiebeTech USB writeblocker. FCS DANIEL then activated the write blocker and verified that the computer was able to recognize the 1GB thumb drive. The thumb drive was recognized. FCS DANIEL then created a forensic image onto a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Kingston 1GB Thumb Drive

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On Tuesday, August 2, 2011, FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of a Kingston 4.0 GB, serial number 0923WF3105B memory card. The memory card is listed as item 2 on GBI evidence receipt E-537030. This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

FCS Daniel moved then switch on the side of the SD card into the lock position which puts the card into read-only mode. When the card is in read-only mode no changes will be made to the suspect media. FCS Daniel then verified that the processing computer was able to recognize the memory card. The memory card was recognized. FCS DANIEL then created a forensic image onto a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Kingston 4GB memory card

000676

On Tuesday, August 2, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of Lexis Nexis 1GB, serial number 36BB-E9BE thumb drive. The thumb drive is listed as item 12 on GBI evidence receipt E-537029. This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

FCS DANIEL connected the Lexis Nexis 1 GB thumb drive to a Dell XPS processing computer via a WiebeTech USB writeblocker. FCS DANIEL then activated the write bloacker and verified that the computer was able to recognize the 1GB thumb drive. The thumb drive was recognized. FCS DANIEL then created a forensic image onto a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Lexis Nexis 1GB Thumb Drive

000677

On Tuesday, August 2, 2011, FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of a Kingston 4.0 GB, serial number 0923WF3105B memory card. The memory card is listed as item 2 on GBI evidence receipt E-537030. This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

FCS Daniel moved then switch on the side of the SD card into the lock position which puts the card into read-only mode. When the card is in read-only mode no changes will be made to the suspect media. FCS Daniel then verified that the processing computer was able to recognize the memory card. The memory card was recognized. FCS DANIEL then created a forensic image onto a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Kingston 4GB memory card item 2

000678

On Tuesday, August 2, 2011, FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of a SanDisk 2.0 GB, serial number BE0636205013D memory card. The thumb drive is listed as item 2 of 2 on GBI evidence receipt E-537030. This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

FCS Daniel moved then switch on the side of the SD card into the lock position which puts the card into read-only mode. When the card is in read-only mode no changes will be made to the suspect media. FCS Daniel then verified that the processing computer was able to recognize the memory card. The memory card was recognized. FCS DANIEL then created a forensic image onto a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – SanDisk memory card item 2-2

000679

On Tuesday August 2, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab to begin the process of examining the forensic image made of a Lexis Nexis 1GB, serial number 36BB-E9BE thumb drive. The thumb drive is listed as item 12 on GBI evidence receipt E-537029. This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. This item was seized by City of Macon Police Department.

The forensic examination for the Lexis Nexis 1GB, serial number 36BB-E9BE thumb drive, listed as item 12 on GBI evidence receipt E-537029 goes as follows: FCS DANIEL loaded the image into EnCase Forensic version 6.17. FCS DANIEL searched through the folders on the drive. Locating no relevant files, FCS DANIEL then searched through all of the photos on the drive using the gallery view of EnCase. Only legal papers and assignments were located on the drive. A log of the steps taken in this examination is included with this summary as attachment 1

Attachment:

Processing Notes — Lexis Nexis 1GB thumb drive

000680

On Wednesday, August 3, 2011, FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of a Toshiba 6.0 GB, serial number X9D72575T internal hard drive which was removed from a Toshiba Protégé 7020CT serial number 39547476A laptop. The hard drive is reflected as item 5 on GBI evidence receipt E-537029. This device belongs to LAUREN GIDDINGS. GIDDINGS is the victim of murder. STEPHEN MCDANIEL is suspected of committing the murder. The items were seized by City of Macon Police Department.

FCS Daniel connected the hard drive to a Dell XPS processing computer via a WiebeTech hardware write blocker. FCS Daniel then activated the write blocker and verified that the processing computer was able to recognize the hard drive. The hard drive was recognized. FCS Daniel then downloaded the forensic image to a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Toshiba Protégé 7020CT

000681

On Wednesday, August 3, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of Western Digital 500GB, serial number WCAUF1719066 external hard drive. The hard drive is listed as item 2 on GBI evidence receipt E-537029. This device belongs to LAUREN GIDDINGS. GIDDINGS is the victim of murder. STEPHEN MCDANIEL is suspected of committing the murder. The items were seized by City of Macon Police Department.

FCS DANIEL connected the Western Digital 500GB external hard drive to a Dell XPS processing computer via a WiebeTech USB writeblocker. FCS DANIEL then activated the write blocker and verified that the computer was able to recognize the 500GB external hard drive. The hard drive was recognized. FCS DANIEL then created a forensic image onto a Western Digital 2TB, serial number WIMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Western Digital 500GB External Hard Drive

000682

On Thursday, August 4, 2011, FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation (GBI) Child Exploitation and Computer Crimes Unit (CEACCU) lab for the purpose of processing a pink Sprint Samsung SPH-M800B cell phone, DEC: 268435458003390809. The cell phone is reflected as Item 6 on GBI evidence receipt E-537029. This device belongs to LAUREN GIDDINGS. GIDDINGS is the victim of murder. STEPHEN MCDANIEL is suspected of committing the murder. The items were seized by City of Macon Police Department.

FCS Daniel removed the battery and the micro SD card from the phone to record the model and serial number, then placed the phone in the Faraday box to block all signals to the cellular network. The phone was connected to the CelleBrite UFED device via with the appropriate cable. FCS Daniel then began an extraction of the contacts, images, audio and videos. FCS Daniel also connected the Micro SD card to a write blocker in order to preview the SD card in EnCase. The extraction was exported to a report for the investigator.

A report CD was created and placed in the case file.

000683

On Tuesday August 9, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation Child Exploitation and Computer Crime Unit (GBI) (CEACC) lab to begin the process of examining the forensic copy made of a Toshiba 250.0GB Serial number 40SLT1FZT which was removed from a Sony Playstation 3, which belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

The forensic examination for the hard drive removed from the aforementioned Sony Playstation 3 goes as follows. FCS MATTHEW DANIEL inserted the forensic copy into the Sony Playstation 3, connected the PS3 to an Insignia television and powered on the PS3. First, FCS DANIEL checked the Time & Date settings; the date and time on the Playstation 3 were both consistent with the current date and time. The time zone is set to Eastern. Then FCS DANIEL searched to see if there were any other user accounts on the PS# other than STEPHEN MCDANIELS. His was the only one which was sonofliberty11@yahoo.com. FCS DANIEL then searched for photos and videos that show evidence relating to the murder of LAUREN GIDDINGS, however nothing was located. FCS DANIEL searched through the internet history and bookmarks from the systems internet browser. There was no evidence of murder or LAUREN GIDDINGS located on the machine.

000684

On Wednesday August 10, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI)(CEACCU) lab to begin the process of examining the forensic images made of a Kingston 1GB, serial number EOFD-1813 thumb drive. The thumb drive is listed as item 17 on GBI evidence receipt E-537029. This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

The forensic examination for the Kingston 1GB, serial number EOFD-1813 thumb drive, listed as item 17 on GBI evidence receipt E-537029 goes as follows: FCS DANIEL loaded the image into EnCase Forensic version 6.17. FCS DANIEL searched through the folders on the drive. A folder called "New Folder" was located; inside that folder were 52 images of child pornography. FCS DANIEL immediately stopped his search and consulted with the FORENSIC COMPUTER SPECIALIST SUPERVISOR BETH MESSICK. FCSS MESSICK advised FCS DANIEL to acquire a new search warrant from the Bibb County Superior Court. After speaking with District Attorney GREGORY WINTERS, a new search was signed by Judge TILMAN SELF, and received by FCS DANIEL on Thursday August 11, 2011 (attachment 1). FCS DANIEL was then able to continue searching through the evidence. . A detailed log of the steps utilized in the examination process was maintained and is included with this investigative summary as attachment 2.

Attachments:

1. Search Warrant
2. Processing lab notes

000685

On Thursday August 11, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI)(CEACCU) lab to begin the process of examining the forensic images made of a Blue SanDisk 2GB memory card serial number: BE0632905002B and another Blue SanDisk 2GB memory card serial number : BE0636205013D. These devices belong to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

The forensic examination for the SanDisk 2 GB blue memory card serial number: BE0632905002B, listed as item 1 of 2 on GBI evidence receipt E-537030 goes as follows: Graphic files were viewed using the Gallery View of EnCase; no images of evidentiary value were present. FCS DANIEL located photos of MCDANIEL. MCDANIEL seems to be on vacation in another country. The pictures on this memory card were taken between the dates of 5-15-2007 and 5-30-2007. Nothing of evidentiary value was located. There was no evidence of child pornography located on this memory card. A detailed log of the steps utilized in the examination process was maintained and is included with this investigative summary as (attachment 1).

The forensic examination for the SanDisk 2GB blue memory serial number: BE0636205013D, listed as item 2 of 2 on GBI evidence receipt E-537030 goes as follows: Graphic files were viewed using the Gallery View of EnCase, located photos of what seems to be more vacation photos. MCDANIEL was located in 2 of the photos. The pictures on this memory card were taken between the dates of 5-31-2007 and 6-5-2007. Nothing of evidentiary value was located. There was no evidence of child pornography located on this memory card. A detailed log of the steps utilized in the examination process was maintained and is included with this investigative summary as (attachment 1).

000686

On Thursday August 11, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI)(CEACCU) lab to begin the process of examining the forensic images made of a Beige 3.5 Floppy Disk labeled "hector power point" barcode: 2112, listed as item 19 on GBI evidence receipt E-537029 .This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

The forensic examination for the 3.5 Floppy Disk labeled "hector power point" barcode: 2112, listed as item 19 on GBI evidence receipt E-537029 goes as follows: Graphic files were viewed using the Gallery View of EnCase; no relevant images were located. FCS DANIEL continued to search for file of interest however no relevant data was located. There was no evidence of child pornography located on this memory card. A detailed log of the steps utilized in the examination process was maintained and is included with this investigative summary as (attachment 1).

Attachment:

Processing Notes – Beige Floppy Disk

000687

On Friday, August 12, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of Memorex traveldrive 2GB, serial number 382F-AA7A thumb drive. The thumb drive is listed as item 4 on GBI evidence receipt E-537029. This device belongs to LAUREN GIDDINGS. GIDDINGS is the victim of murder. STEPHEN MCDANIEL is suspected of committing the murder. The items were seized by City of Macon Police Department.

FCS DANIEL connected the Memorex traveldrive 2GB thumb drive to a Dell XPS processing computer via a WiebeTech USB writeblocker. FCS DANIEL then activated the write blocker and verified that the computer was able to recognize the 1GB thumb drive. The thumb drive was recognized. FCS DANIEL then created a forensic image onto a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Memorex traveldrive 2GB Thumb Drive

000688

On Thursday August 18, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI)(CEACCU) lab to begin the process of examining the forensic images made of Memorex traveldrive 2GB, serial number 382F-AA7A thumb drive, listed as item 4 on GBI evidence receipt E-537029. This device belongs to LAUREN GIDDINGS. GIDDINGS is the victim of murder. STEPHEN MCDANIEL is suspected of committing the murder. The items were seized by City of Macon Police Department.

The forensic examination for the Memorex traveldrive 2GB, serial number 382F-AA7A thumb drive, listed as item 4 on GBI evidence receipt E-537029 goes as follows: FCS DANIEL loaded the image into EnCase Forensic version 6.17. FCS DANIEL first searched through all pictures on the drive in the gallery view of EnCase. No relevant data was located. FCS DANIEL then continued to search through all of the other files and folders on the drive, on the search was complete the recover folders was initiated to locate any deleted folders. No folders were recovered. As a result of this examination, nothing of evidentiary value was located on the Memorex 2GB traveldrive. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Memorex traveldrive 2GB Thumb Drive

000689

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

FILED
CLERK'S OFFICE
2012 DEC 14 AM 10:56

DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

STATE OF GEORGIA

:

:

v.

:

:

STEPHEN MCDANIEL

:

INDICTMENT: 11-CR-67684

[2.13]

MOTION TO SUPPRESS THE SEARCH WARRANT
FOR 1058 GEORGIA AVENUE, APARTMENT FOUR,
MACON, GEORGIA, ISSUED JULY 21, 2011, AT 4:25 P.M.
(WARRANT EIGHT)

STEPHEN MCDANIEL, through counsel, requests that this Court exclude any evidence gathered by law enforcement during a search of Stephen McDaniel's apartment, which occurred sometime around 4:55 p.m. on Thursday, July 21, 2011. The acquisition of any evidence, which includes observations by police while in the apartment, violated Stephen's expectation of privacy, protected by the United States Constitution, Fourth Amendment, applied to the states through the Fourteenth Amendment, and the Georgia Constitution, Article I, Section I, Paragraph XIII. In addition, Stephen makes this motion pursuant to O.C.G.A. § 17-5-30. In support of this Motion, Stephen shows the following:

I. Factual Background

After conducting two warrantless searches of Stephen's apartment and a warrantless search of his person, both of which are the subject of separate and distinct motions in this case, Detective David Patterson of the Macon Police Department applied for two search warrants for Stephen's apartment (warrants one and two). Detective Kenneth Chapman applied for another warrant (warrant 5) eleven days after the execution of those warrants for Stephen's apartment. Detective Patterson applied for another warrant eight days after that for yet another search of Stephen's apartment (warrant six). Detective Patterson applied for this warrant (warrant eight) the next day, July 21, 2011. Stephen's apartment, number four, is located at 1058 Georgia Avenue, Macon, Georgia. Based upon a sworn affidavit and other sworn oral testimony, Judge Tilman E. Self, III, issued this search warrant for Stephen's apartment (warrant eight).

This warrant authorized law enforcement to search the location for, and subsequently seize, any "fingernail clippings, Stanley hacksaw packaging, and one pair of women's underwear, which are evidence of

crime of Murder, in violation of O.C.G.A. §16-5-1 and Burglary in violation of O.C.G.A. §16-7-1." This warrant was issued at 4:25 p.m. on July 21, 2011 and executed at 4:55 p.m. of the same day.¹

II. Argument

A. The Information the Warrant Is Based Upon Is the Fruit of Illegal Warrantless Searches and, as Such, Subjects All Evidence Seized As A Result to Exclusion

The United States Supreme Court in *Weeks v. United States*, 232 U.S. 383 (1914) adopted what has become known as the "exclusionary rule" as a remedy for violations of the Fourth Amendment to the United States Constitution. The exclusionary rule bars the use of unconstitutionally seized evidence at trial. The Court found this rule necessary to prevent the reduction of the Fourth Amendment to a mere "form of words." *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). The Supreme Court incorporated the exclusionary rule of the Fourth Amendment to the states through the Fourteenth Amendment in *Rochin v. California*, 342 U.S. 165 (1952) and *Mapp v. Ohio*, 367 U.S. 643 (1961).

HOGUE & HOGUE
341 Third Street
P.O. Box 1795
Macon, GA 31202
478-750-8040
478-738-0859 (fax)

¹ These times come from the time of issuance and execution from the warrant itself and the warrant return.

When the exclusionary rule applies it extends to both the direct products of governmental illegality and its secondarily-derived evidence; commonly referred to as the "fruit of the poisonous tree." *Nardone v. United States*, 308 U.S. 338, 341 (1939).

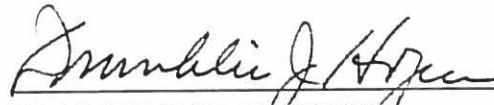
Here, this warrant is the fruit of illegal warrantless searches of Stephen's apartment and person. These searches are the subject of other motions in this case. Information gathered during these warrantless intrusions upon Stephen's home and body served as the basis for the warrant at issue here and, as such, all information gathered as a result of the illegal searches is tainted, irreparably, by the illegality and should be excluded. Additionally, observations by law enforcement during the execution of warrants one, two, five, and six led to the request for and issuance of this warrant (warrant eight). Warrants one, two, five, and six are the subject of other motions in this case and, should those warrants be excluded, all observations from the execution of those warrants, which served, partially, as the basis for warrant eight, should be excluded as well as the fruits of illegal police conduct.

Thus, the Defendant moves this Court to exclude from evidence in this case all items seized as a result of this warrant as the fruits of prior unconstitutional, warrantless searches.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



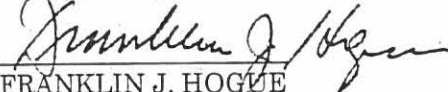
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.



FRANKLIN J. HOGUE

HOGUE & HOGUE
341 Third Street
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Macon, GA 31202
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478-738-0859 (fax)

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

1058 Georgia Avenue, Apartment #4
Macon, Bibb County, Georgia

APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

The undersigned hereby applies for issuance of a Search Warrant. The applicant swears that he has probable cause to believe that fingernail clippings, Stanley hacksaw packaging, and one pair of women's underwear, which are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1 and Burglary in violation of O.C.G.A. §16-7-1., are concealed in a certain location, to-wit: 1058 Georgia Avenue, Apt. #4, Macon, Georgia. This Apartment building is a two-story apartment building with stucco-type finish. There is an awning over a patio porch on the building. The building contains eight apartments. If one is standing on Georgia Avenue and facing the building, Apartment #4 is the top right-hand apartment. It bears the number four on the door.

The applicant, based upon facts and circumstances contained in the affidavit of Detective David Patterson, which is attached to this Application and made a part of it by reference, shows probable cause exists to cause a search warrant to issue for the limited purpose of collecting and seizing the above-named evidence from the above named location.

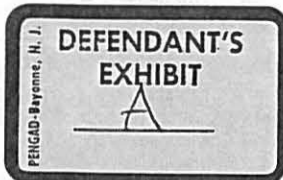
This Application is made for the purpose of enforcement of the criminal laws of this State and not for the purpose of any personal, civil, or property rights. The applicant is an officer of the law with the Macon Police Department.

Respectfully submitted, this 21 day of July 20 11.

[Signature]
APPLICANT

Sworn to and subscribed before me, this 21 day of July, 20 11,
at 4:25 o'clock P.m.

[Signature]
TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit



000647

EXHIBIT A

AFFIDAVIT

My name is Detective David Patterson and I am currently employed by the Macon Police Department. I am a P.O.S.T. Certified Law Enforcement Officer for the State of Georgia. I have been employed by the Macon Police Department since 1996. I am assigned to the Criminal Investigations Division investigating violent crimes. I have been assigned to the violent crimes division since 2001. Prior to working in the violent crimes division, I have worked as a patrol officer answering calls for service from residences within the community. I have investigated misdemeanor crimes, traffic accidents, felony crimes, and assisted in preventing crimes. I have been a field-training officer; training newly hired officers once they have completed their basic mandate course. I have received specialized training in gang investigation, domestic violence, criminal investigation, criminal sexuality, homicide investigations, writing search warrants and affidavits. I have received over five hundred hours of training. I have investigated numerous misdemeanor and felony crimes, including homicides, robberies, rapes, aggravated assaults, and many others. I have participated in multi-jurisdictional prosecutions. I have assisted other officers and detectives writing and executing search warrants. I have interviewed and interrogated hundreds of victims, witnesses, and suspects. I have testified in municipal court, magistrate court, state court, and superior court.

The following is the basis for finding probable cause so as to authorize the search warrant for which I have applied: On June 30, 2011, Mercer Police Department received a call to respond to 1058 Georgia Avenue regarding a missing person, Lauren Giddings, a resident in Apartment #2 at said location. Upon arrival, Officer Vince Broccolo met with the complainant, Ashley Morehouse. Ms. Morehouse advised Officer Broccolo that her friend, Ms. Giddings, was missing and would not answer the front door to Ms. Giddings' apartment. Complainant stated that she entered Ms. Giddings apartment with a hidden key and could not locate Ms. Giddings. Officer Broccolo then

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contacted the Macon Police Department ("MPD") and notified them of the situation. MPD Officer Copeland responded to the scene and met with Complainant and several other concerned friends. Later that same morning, at approximately 9:15 a.m., I, along with, SGT Kenneth Scott Chapman, received the report of the missing person and we proceeded to the location. We were met upon arrival by the original Complainant and SGT Steve Gatlin, with the MPD Crime Lab.

While standing on the outside of the apartment complex, we smelled a strong odor coming from the garbage containers and observed several flies swarming around the trash containers. I immediately recognized this odor to be that of dead person, which I both know and recognize from my training and experience having investigated homicides previously. I notified SGT Gatlin, who opened the garbage containers, and he found two large black garbage bags. At this time, SGT Gatlin opened one of the trash bags and discovered that it contained what appeared to be a human female torso with what appeared to be a superficial cut or wound to the chest. The human torso did not have a head, arms, or legs.

SGT Chapman and I then began to interview neighbors. We knocked on the door of Apartment #4 and Stephen McDaniel came to the door and we talked with him. We asked McDaniel if he would come to the Detective Bureau and give a statement regarding his neighbor Lauren Giddings. He agreed to come. I, Detective Patterson, interviewed McDaniel at the Detective Bureau at which time I saw a red mark on the left side of his face near his nose. I asked him if he had any other marks on his body. He lifted his t-shirt and revealed what appeared to be two fresh scratch marks on the right side of his stomach. These scratch marks were approximately three to five inches in length. During the interview of Stephen McDaniel, I asked him for consent to search his apartment, which he granted. McDaniel gave oral consent which was recorded on video.

000649

We then left the Detective Bureau and proceeded back to Georgia Avenue. When we arrived at McDaniel's apartment, which is apartment #4, he unlocked the door and allowed me and SGT Chapman to go in with him and look around. While inside the apartment, I observed a large "Samurai-type" sword in McDaniel's bedroom and a large knife with a blade in excess of a twelve inches also in his bedroom. I also observed numerous firearms, including what appeared to be a semi-automatic rifle and a semi-automatic handgun lying on the bed. I also saw a large cooler sitting near the front door. We then left the apartment, and McDaniel, who was not in custody, left our presence.

Subsequently, McDaniel returned to the Georgia Avenue area and struck up a conversation with MPD detectives and DA's Office personnel who were on the scene, including DA's Investigator Jim McDonald. In the presence of SGT Chapman, Investigator McDonald asked McDaniel whether he would consent to allow investigators from the Macon Police Department Crime Scene unit to enter his apartment. McDaniel agreed that he would allow this, provided he could be present. McDaniel then admitted officers back into Apartment #4.

Because of the torso being found in the garbage container and the necessity to search for additional body parts, Macon Police Department personnel had contacted Tracy Sargent, who handles two human remains detection (HRD) dogs, commonly known as a "cadaver dogs", called Cinco and Chance. HRD canines are trained to detect the odor of human remains, which may include not only corpses but also blood, semen, and other body fluids or tissues, for a period of up to several years after said specimens were in a particular location. Cinco has been certified on the local, state, national and international levels for HRD for the last five years. Chance has been certified on the local and state level for HRD for the last seven months. Ms. Sargent has been handling HRD canines for the last 18 years and is a handler, trainer, evaluator, master trainer, and subject matter expert in the training and handling of HRD canines.

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In the presence of SGT Kenneth Scott Chapman, SGT Steve Gatlin, and DA Investigator McDonald, and McDaniel, Ms. Sargent utilized her HRD canines to sniff the inside of McDaniel's apartment. Ms. Sargent has reported to me that she first utilized Cinco to sniff the inside of McDaniel's apartment (#4) and then utilized Chance to sniff the inside of McDaniel's apartment. Both Cinco and Chance separately alerted on the scent of human remains in the back bedroom and bathroom of McDaniel's apartment.

Ms. Sargent also utilized Cinco and Chance to perform separate searches of Apartment #1, which is located in the same building, directly below Apartment #2, which is Lauren Giddings apartment. Cinco and Chance both alerted on the scent of human remains in the bathroom of Apartment #1 and the back wall of the living room of Apartment #1. According to MPD Crime Scene Investigator Amy Wheeler, the wall where the HRD canines alerted appeared to have been freshly painted in some sections, and there were some small stains and smears which appeared to be consistent with dried blood.

The human torso found in the garbage dumpster was submitted to the Office of the Medical Examiner for examination. Dr. Gaffney Kraft was the medical examiner who performed the post-mortem examination. Dr. Gaffney Kraft reported that the torso was clad in cotton shorts with no underwear or shirt. Dr. Gaffney Kraft located a few hairs which appeared to be brown in color and several inches long on the abdomen, and a clump of hair on the back of the shorts which appeared to be made up of a mixture of brown and blonde hair which appeared to be saturated in decomposition fluid. Stephen McDaniel has long shoulder-length brown hair. Lauren Giddings had blonde hair.

At approximately 6:00 p.m. on June 30, 2011, MPD Crime Scene Investigators performed a "luminol examination" of the bathroom in Lauren Giddings' apartment, which is Apartment #2 of the same building located at 1058 Georgia Avenue. This examination revealed

the possibility of substantial quantities of blood both around the drain of the bathroom tub and splattered on the walls of the tub and above the tub to a height of approximately four feet.

Stephen McDaniel identified a certain four-door black Geo Prism, bearing Georgia tag number BTL2870, which is parked outside the apartments, as being his vehicle. A visual inspection from the outside of this car reveals large dark stains possibly consistent in appearance with blood on both the front and rear seats. The Vehicle Identification Number (VIN) of this car is 1Y1SK5281VZ443940. A check of the tag registration reveals that the vehicle is registered to Stephen McDaniel at 1058 Georgia Avenue, Apt. #4.

After discovering the above evidence, McDaniel was returned to the MPD Detective Bureau for additional questioning. During the course of this interview McDaniel stated that he stays on his computer while at home and uses the same as his main source of communication. He stated that he frequently visits sites featuring pornography and has ordered guns, knives and ammunition from the internet. During the initial survey of McDaniel's apartment, I observed a laptop computer as well as what appeared to be a brand new digital camera. Based upon my training, I am aware that often individuals involved in ritualistic or sexually-motivated killings will photograph the body or otherwise record the event for future enjoyment.

During this additional questioning, McDaniel made statements to MPD LT Carl Fletcher regarding the fact that he was a virgin and was saving himself for marriage. LT Fletcher became aware that several condoms were located inside McDaniel's apartment and asked McDaniel why he would need condoms if he was a virgin and had no plans to engage in sexual intercourse. At this time McDaniel stated that he had stolen the condoms. Two of the condoms were stolen from his sister, the additional condoms were stolen from other apartments located at 1058 Georgia Avenue.

000652

On July 1, 2011, while serving a search warrant issued on the same date, Officers with the Macon Police Department located two keys inside Stephen McDaniel's apartment at 1058 Georgia Avenue, Apartment #4. One of the keys located was determined to be a "master key" that opens every door located on the property at 1058 Georgia Avenue. Stephen McDaniel was not authorized to be in possession of said key. The second key was determined to be a key to 1058 Georgia Avenue Apartment #2, the victim's apartment. Stephen McDaniel was not authorized to be in possession of said key.

On Tuesday, July 12, 2011, I received information from the FBI Crime Lab Trace Unit regarding initial results of trace evidence testing on items of evidence collected in this case. The initial results indicate that certain blue fiber(s) found on the shorts being worn by the victim at the time her torso was located are similar with blue fiber(s) found on a grey t-shirt found inside 1058 Georgia Avenue, Apartment #4. Therefore, it is reasonable to conclude that the common source of the similar fibers is currently located in 1058 Georgia Avenue, Apartment #4.

On Tuesday, July 12, 2011, while officers were executing the search warrant granted on that date for materials containing blue fibers, digital storage devices were located that were not seized during the execution of a previous search warrant issued July 1, 2011 for said items. Officers also located several rings that do not appear to belong to McDaniel based on the inscriptions on the interior of the ring bands and thus may be stolen and may be evidence of additional Burglaries.

On Wednesday, July 20, 2011, while officers were executing the search warrant granted on that date for jewelry and digital storage devices, officers located additional items within 1058 Georgia Avenue, Apartment #4 that I believe is relevant evidence to my investigation of the murder of Lauren Giddings. Officers located what appear to be fingernail clippings in the

000653

bedroom of 1058 Georgia Avenue, Apartment #4. Based on my knowledge and experience investigating homicides I am aware that persons, particularly ones concerned with committing the "perfect murder", may try to conceal certain scientific evidence in many ways. One of the ways to conceal possible scientific evidence is to cut ones fingernails in an attempt to rid oneself of any of the victims DNA that may be located under the same.

Officers also located a yellow and black Stanley brand hacksaw packaging in the bathroom vanity. This packaging is consistent with a Stanley brand hacksaw that was located in a storage closet on the premises of 1058 Georgia Avenue on July 2. The located hacksaw field tested positive for human blood and is currently at the FBI Crime Lab being tested for DNA and other evidence. The location of the hacksaw when discovered by the MPD Crime Lab is accessible only by persons with access to a master key. Stephen McDaniel, the resident of 1058 Georgia Avenue, Apartment #4, had access to such a key. It is believed at this time that the body of Lauren Giddings was dismembered by use of a hacksaw.

Officers also located one pair of women's green and white underwear concealed within a dresser drawer in the bedroom of 1058 Georgia Avenue, Apartment #4. The underwear appear to have been worn previously and it is my belief that they may contain DNA evidence due to bloodlike stains visible on the garment. When the torso of Lauren Giddings was discovered, she was still wearing shorts but not underwear.

Based on all of the above, I believe that probable cause exists to search the apartment of Stephen McDaniel located at 1058 Georgia Avenue Apartment #4 for the limited purpose of collecting the above mentioned fingernail clippings, Stanley hacksaw packaging, and one pair of women's underwear, which are evidence of the crime of Murder, in violation of O.C.G.A.

000654

§16-5-1 and Burglary in violation of O.C.G.A. §16-7-1. All of the above information is true and correct to the best of my knowledge and belief.

This 21 day of July, 20 11

Det. [Signature] 212
AFFILIANT

Sworn to and subscribed before me, this 21 day of July, 20 11,
at 4:25 o'clock P..m.

[Signature]
TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

000655

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

1058 Georgia Avenue, Apartment #4
Macon, Bibb County, Georgia

SEARCH WARRANT

To Detective David Patterson, applicant, and to any and all other peace officers for the State of Georgia, Greetings:

Based upon sworn affidavit made in writing before me, and based upon other sworn oral testimony, I find that probable cause exists which authorizes the issuance of a warrant to search a certain 1058 Georgia Avenue, Apt. #4, Macon, Georgia, for the limited purpose of collecting fingernail clippings, Stanley hacksaw packaging, and one pair of women's underwear, which are evidence of the crime of Murder, in violation of O.C.G.A. §16-5-1 and Burglary in violation of O.C.G.A. §16-7-1.

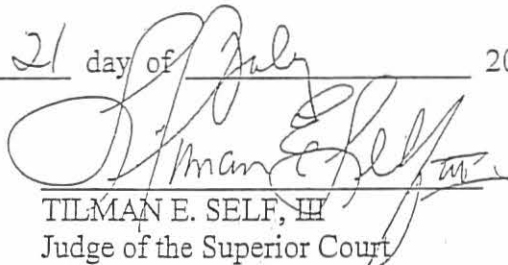
Upon the finding of such evidence pursuant to this Warrant officers are authorized to seize the evidence; provided that an accurate inventory of all property seized is made to this Court upon this Warrant's return.

Therefore, you are hereby commanded to search the location and seize the evidence herein named, leaving behind a copy of this warrant and a receipt of the property seized.

Pursuant to the Georgia Code, officers shall return this Warrant to this Court; the return must show the date and time of the warrant's execution, and must contain an inventory of property seized.

This Warrant shall be executed within ten days of its issuance, or, failing that, be returned to this Court and marked, "Not Executed."

Given under my hand and Seal this 21 day of July 2011, at
4:25 o'clock P.m.


TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

000656

RETURN

This warrant was executed at the named location at 4:55 o'clock P.M. On the 21st day of July 2011.

The following evidence was seized:

1. One pair of women's underwear green in color with white dots
2. One Stanley hacksaw packaging
3. Finger nail clippings

[Signature]
AFFIANT

Sworn to and subscribed before me, this 1 day of Aug, 20 11
At 3:01 o'clock P.m.

[Signature]
TILMAN E. Self, III
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

000657

IN THE SUPERIOR COURT OF BIBB COUNTY

STATE OF GEORGIA

FILED
CLERK'S OFFICE
DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

STATE OF GEORGIA

:

:

v.

:

INDICTMENT: 11-CR-67684

:

STEPHEN MCDANIEL

:

[2.14]

MOTION TO SUPPRESS THE SEARCH WARRANT
FOR DATA ON DIGITAL STORAGE DEVICES SEIZED FROM
1058 GEORGIA AVENUE, APARTMENT FOUR,
MACON, GEORGIA, ISSUED AUGUST 11, 2011, AT 9:31 A.M.
(WARRANT NINE)

STEPHEN MCDANIEL, through counsel, requests that this Court exclude any evidence gathered by law enforcement during a search of digital storage devices¹ seized from Stephen McDaniel's apartment, which occurred, on numerous instances, between Tuesday August 2, 2011 and Thursday August 18, 2011. The acquisition of any evidence, violated Stephen's expectation of privacy, protected by the United States Constitution, Fourth Amendment, applied to the states through the Fourteenth Amendment, and the Georgia Constitution, Article I, Section I, Paragraph XIII. In addition, Stephen makes this motion pursuant to

¹ For the ease of the reader, this Motion will refer to "digital storage devices" which is meant to include computers, cameras, cellular telephones, and digital storage devices; all types of digital storage devices previously seized in this case and the subject of warrant seven.

O.C.G.A. § 17-5-30. In support of this Motion, Stephen shows the following:

I. Factual Background

After conducting two warrantless searches of Stephen's apartment and a warrantless search of his person, both of which are the subject of separate and distinct motions in this case, Detective David Patterson of the Macon Police Department applied for two search warrants for Stephen's apartment (warrants one and two); one of which (warrant two) contained "digital storage devices" among the items to be seized. On July 20, 2011, Detective Patterson applied for another warrant (warrant six) that also authorized the seizure of "digital storage devices." On July 21, 2011, Detective Patterson applied for and received a warrant (warrant seven) to search all digital storage devices yet seized by Macon Police pursuant to earlier warrants (all of these warrants are the subjects of separate and distinct motions). Based upon a sworn affidavit and other sworn oral testimony, Judge Tilman E. Self, III, issued this search warrant for the data contained on digital storage devices seized from Stephen's apartment (warrants two and six).

This warrant (warrant nine) authorized law enforcement to search the "data contained in computers, cameras, cellular telephones and digital storage devices that were located and seized during previously authorized search warrants of 1058 Georgia Avenue, Apartment #4, the apartment of Stephen McDaniel, which contain and are evidence of the crime of Child Pornography in violation of O.C.G.A. §16-12-100." This warrant was issued at 9:31 a.m. on August 11, 2011² and executed on multiple instances from August 2 to August 18, 2011.³

II. Argument

A. The Information the Warrant Is Based Upon Is the Fruit of Illegal Warrantless Searches and, as Such, Subjects All Evidence Seized As A Result to Exclusion

The United States Supreme Court in *Weeks v. United States*, 232 U.S. 383 (1914) adopted what has become known as the "exclusionary rule" as a remedy for violations of the Fourth Amendment to the United States Constitution. The exclusionary rule bars the use of unconstitutionally seized evidence at trial. The Court found this rule necessary to prevent the reduction of the Fourth Amendment to a mere "form of words."

² The warrant return refers to documents provided by GBI computer specialist Matthew Daniel, but those documents do not denote which warrant (warrant seven or nine) the searches are pursuant to.

³ These times come from the time of issuance and execution from the warrant itself and the warrant return.

Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920). The Supreme Court incorporated the exclusionary rule of the Fourth Amendment to the states through the Fourteenth Amendment in *Rochin v. California*, 342 U.S. 165 (1952) and *Mapp v. Ohio*, 367 U.S. 643 (1961).

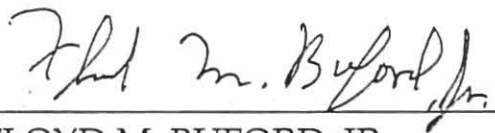
When the exclusionary rule applies it extends to both the direct products of governmental illegality and its secondarily-derived evidence; commonly referred to as the "fruit of the poisonous tree." *Nardone v. United States*, 308 U.S. 338, 341 (1939).

Here, this warrant is the fruit of illegal warrantless searches of Stephen's apartment and person. These searches are the subject of other motions in this case. Information gathered during these warrantless intrusions upon Stephen's home and body served as the basis for the warrant at issue here and, as such, all information gathered as a result of the illegal searches is tainted, irreparably, by the illegality and should be excluded. Additionally, observations by law enforcement during the execution of warrants one, two, five, and six led to the request for and issuance of this warrant (warrant seven). Warrants one, two, five, and six are the subject of other motions in this case and, should those warrants be excluded, all observations from the execution of those warrants,

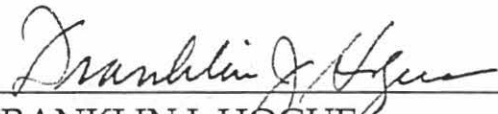
which served, partially, as the basis for warrant seven, should be excluded as well as the fruits of illegal police conduct.

Thus, the Defendant moves this Court to exclude from evidence in this case all items seized as a result of this warrant as the fruits of prior unconstitutional, warrantless searches, or, in the alternative, if the Court finds that any searches of the digital storage devices executed pursuant to warrant nine occurred before the issuance of warrant nine, exclude the fruits of those searches occurring before the issuance of warrant nine.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



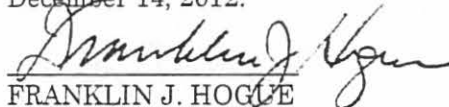
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.


FRANKLIN J. HOGUE

HOGUE & HOGUE
341 Third Street
P.O. Box 1795
Macon, GA 31202
478-750-8040
478-738-0859 (fax)

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

Items in Exhibit A
Located and Seized from:
Stephen McDaniel
1058 Georgia Avenue Apartment #4

APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

The undersigned hereby applies for issuance of a Search Warrant. The applicant swears that he has probable cause to believe that the data contained in computers, cameras, cellular telephones and all other digital storage devices that were located and seized at 1058 Georgia Avenue Apartment #4, the Apartment of Stephen McDaniel, contain data and are evidence of the crime of Child Pornography in violation of O.C.G.A. 16-12-100. Said data is concealed and contained within the items specifically annotated in Exhibit A which is attached to this Application and made a part of it by reference.

The applicant, based upon facts and circumstances contained in the affidavit of Detective David Patterson, which is attached to this Application and made a part of it by reference, shows probable cause exists to cause a search warrant to issue requiring search be made of the above-named location for the above-named evidence.

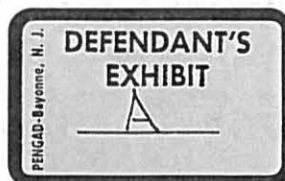
This Application is made for the purpose of enforcement of the criminal laws of this State and not for the purpose of any personal, civil, or property rights. The applicant is an officer of the law with the Macon Police Department.

Respectfully submitted, this 11 day of Aug 20 11.

Det David Patterson #213
APPLICANT

Sworn to and subscribed before me, this 11 day of Aug, 2011,
at 9:31 o'clock A.m.

TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit



000691

EXHIBIT B

AFFIDAVIT

My name is Detective David Patterson and I am currently employed by the Macon Police Department. I am a P.O.S.T. Certified Law Enforcement Officer for the State of Georgia. I have been employed by the Macon Police Department since 1996. I am assigned to the Criminal Investigations Division investigating violent crimes. I have been assigned to the violent crimes division since 2001. Prior to working in the violent crimes division, I have worked as a patrol officer answering calls for service from residence within the community. I have investigated misdemeanor crimes, traffic accidents, felony crimes, and assisted in preventing crimes. I have been a field-training officer; training newly hired officers once they have completed their basic mandate course. I have received specialized training in gang investigation, domestic violence, criminal investigation, criminal sexuality, homicide investigations, writing search warrants and affidavits. I have received over five hundred hours of training. I have investigated numerous misdemeanor and felony crimes, including homicides, robberies, rapes, aggravated assaults, and many others. I have participated in multi-jurisdictional prosecutions. I have assisted other officers and detectives writing and executing search warrants. I have interviewed and interrogated hundreds of victims, witnesses, and suspects. I have testified in municipal court, magistrate court, state court, and superior court.

The following is the basis for finding probable cause so as to authorize the search warrant for which I have applied: pursuant to a search warrant issued by this court on July 21, 2011, Matthew Daniel a Forensic Computer Specialist with the Georgia Bureau of Investigation began analyzing the contents of items listed in "Exhibit A" for evidence of Murder, in violation of O.C.G.A. §16-5-1 and Burglary, in violation of O.C.G.A. §16-7-1.

000692

Upon opening a folder on a White 1GB flash drive on a black and orange Mercer lanyard (item #14 in "Exhibit A") Mr. Daniel discovered multiple depictions of child pornography. One photograph depicts a man appearing to be in his 50's engaging in both oral sex and vaginal intercourse with a female that appears to be between the ages of 5 and 10. Another photograph depicts two males that appear to be between the ages of 12 and 14 performing oral sex.

It is requested that the Macon Police Department and the FCS of the Georgia Bureau of Investigation be granted authorization to search for, seize and analyze the relevant data from the computer related items described in the "Exhibit A" of this search warrant.

Based on all of the above, I believe that probable cause exists to search the contents of the computers, cameras, cellular telephones and digital storage devices contained within "Exhibit A" of Stephen McDaniel that were located and seized by the Macon Police Department at 1058 Georgia Avenue Apartment #4 during search warrants which contain and are evidence of the crime of Child Pornography in violation of O.C.G.A. 16-12-100. All of the above information is true and correct to the best of my knowledge and belief.

This 11 day of AUG, 20 11

Det. [Signature] #263
AFFIANT

Sworn to and subscribed before me, this 11 day of Aug, 20 11,

at 9:30 o'clock A.m

[Signature]
TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

000693

EXHIBIT A

ITEMS AUTHORIZED TO BE SEARCHED

RE: DIGITAL STORAGE DEVICES FROM STEPHEN MCDANIEL'S APARTMENT

1. One Dell Latitude D630 Laptop Computer-Service Tag #JZCCRG1, Silver and Gray in color
2. One WD External Storage Drive, WD P/N: WD6000H1U-00, Black in color
3. One Dynex mini memory card reader/writer, 10D19, Silver and Gray in color
4. One T-Mobile Nokie Cell Phone, Blue and Silver. Front of Phone is Silver with the "Nokia" at the top. Model 6010.
5. One Memorex USB 2.0GB Travel Drive, Gray in color
6. One Sony Playstation 2, Serial # U3853719
7. One Xbox System with Remote, Serial #401687232805, Black and Red in color
8. One Playstation 3, Serial #CG512687546
9. Three spools of Maxell CDs containing 25 CDs per spool
10. Lexus/Nexus Flash Drive, Silver and Red in color in a Silver case
11. One Black CD case containing the following 11 Memorex CDs:
 - Burn Files CD 1
 - Burn Files CD 2
 - Burn Files CD 3
 - Burn Files CD 4
 - Burn Files CD 5
 - Burn Files CD 6
 - Burn Files CD 7
 - Burn Files CD 8
 - Burn Files CD 9
 - The Punisher DVD
 - AMVs
12. One Clear CD case containing one large disk and one small Medal of Honor disk
13. One Clipster 4 in 1 Digital Camera, Green and Black with Operating Disk and USB Cable in package containing UPC Code 5774800026
14. One 1GB Flash Drive, White in color attached to a Black and Orange Mercer Lanyard
15. Two Dell Operation System CDs
16. One Dell DVD Drive Module, LBLP/N C3284-A00
17. One Sandisk 2GB SD Card, BE0636205013D, Blue-Red-White in Color
18. One Sandisk 2GB SD Card, BE0632905002B, Blue-Red-White in Color
19. One PNY 4GB USB Flash Drive in Package, UPC 5149241679
20. One FujiFilm MF2HD Floppy Disk Labeled "Hector PowerPoint by Stephen McDaniel"
21. One Kingston Technology 4GB SD Card with label on back of package marked SD4/4GBKR, on front of package in handwritten in blue ink is "McDaniel"
22. One Mac 1.44 Floppy Drive label marked EUS01E854, Serial #FYB04300839
23. One CD case containing one Memorex CDR, White in color marked "Vanilla Sky"
24. One Office Depot CDR marked "Total Protect 2004"

000694

25. One CD titled "Pinnacle Instant Video Album", Version 1.1, Label on back marked "7614235"
26. One Norton Antivirus 2004 CD, Label on back marked "34865-B23"
27. One Gateway Application CD, Label on back marked "7514331"
28. One Windows XP Operating CD, Label on back marked "7514796"
29. One Microsoft Office Standard Edition CD, Product Key VM24M-9M268-989WR-77M9K-WQ8FQ
30. One AOL 9.0 CD, Label on back marked 7514022
31. One HP PSC CD for HP Office Jet 6100 Series
32. One GW Engineering CD
33. One Gateway Laptop, Model #450ROG, Serial #0034165998, Gray in color
34. One Toshiba Portege Laptop, Model #7020CT, Serial #39547476R-3, connected to Toshiba Docking Station, Serial #Z9012876, Gray in color
35. One Canon Powershot SX130IS, Serial #232603031023
36. One FujiFilm MF2HD Floppy Disk, numbers on back are 2251001A
37. One Memorex 2GB Travel Drive attached to one Memorex Lanyard
38. One CD entitled "Club Confidential Slammin Amateurs"
39. Three Nexxtech DVDs titled "Exosquad 1 of 3, Exosquad 2 of 3, Exosquad 3 of 3"

000695

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

Items in Exhibit A
Located and Seized from:
Stephen McDaniel
1058 Georgia Avenue Apartment #4

APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

The undersigned hereby applies for issuance of a Search Warrant. The applicant swears that he has probable cause to believe that the data contained in computers, cameras, cellular telephones and all other digital storage devices that were located and seized at 1058 Georgia Avenue Apartment #4, the Apartment of Stephen McDaniel, contain data and are evidence of the crime of Child Pornography in violation of O.C.G.A. 16-12-100. Said data is concealed and contained within the items specifically annotated in Exhibit A which is attached to this Application and made a part of it by reference.

The applicant, based upon facts and circumstances contained in the affidavit of Detective David Patterson, which is attached to this Application and made a part of it by reference, shows probable cause exists to cause a search warrant to issue requiring search be made of the above-named location for the above-named evidence.

This Application is made for the purpose of enforcement of the criminal laws of this State and not for the purpose of any personal, civil, or property rights. The applicant is an officer of the law with the Macon Police Department.

Respectfully submitted, this 11 day of Aug 20 11.

Det David Patterson #213
APPLICANT

Sworn to and subscribed before me, this 11 day of Aug, 20 11,
at 9:31 o'clock A.m.

Tilman E. Self, III
TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit

000696

EXHIBIT A

ITEMS AUTHORIZED TO BE SEARCHED

RE: DIGITAL STORAGE DEVICES FROM STEPHEN MCDANIEL'S APARTMENT

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 - Burn Files CD 6
 - Burn Files CD 7
 - Burn Files CD 8
 - Burn Files CD 9
 - The Punisher DVD
 - AMVs
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19. One PNY 4GB USB Flash Drive in Package, UPC 5149241679
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21. One Kingston Technology 4GB SD Card with label on back of package marked SD4/4GBKR, on front of package in handwritten in blue ink is "McDaniel"
22. One Mac 1.44 Floppy Drive label marked EUS01E854, Serial #FYB04300839
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000697

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27. One Gateway Application CD, Label on back marked "7514331"
28. One Windows XP Operating CD, Label on back marked "7514796"
29. One Microsoft Office Standard Edition CD, Product Key VM24M-9M268-989WR-77M9K-WQ8FQ
30. One AOL 9.0 CD, Label on back marked 7514022
31. One HP PSC CD for HP Office Jet 6100 Series
32. One GW Engineering CD
33. One Gateway Laptop, Model #450ROG, Serial #0034165998, Gray in color
34. One Toshiba Portege Laptop, Model #7020CT, Serial #39547476R-3, connected to Toshiba Docking Station, Serial #Z9012876, Gray in color
35. One Canon Powershot SX130IS, Serial #232603031023
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38. One CD entitled "Club Confidential Slammin Amateurs"
39. Three Nexxtech DVDs titled "Exosquad 1 of 3, Exosquad 2 of 3, Exosquad 3 of 3"

000698

EXHIBIT B

AFFIDAVIT

My name is Detective David Patterson and I am currently employed by the Macon Police Department. I am a P.O.S.T. Certified Law Enforcement Officer for the State of Georgia. I have been employed by the Macon Police Department since 1996. I am assigned to the Criminal Investigations Division investigating violent crimes. I have been assigned to the violent crimes division since 2001. Prior to working in the violent crimes division, I have worked as a patrol officer answering calls for service from residence within the community. I have investigated misdemeanor crimes, traffic accidents, felony crimes, and assisted in preventing crimes. I have been a field-training officer; training newly hired officers once they have completed their basic mandate course. I have received specialized training in gang investigation, domestic violence, criminal investigation, criminal sexuality, homicide investigations, writing search warrants and affidavits. I have received over five hundred hours of training. I have investigated numerous misdemeanor and felony crimes, including homicides, robberies, rapes, aggravated assaults, and many others. I have participated in multi-jurisdictional prosecutions. I have assisted other officers and detectives writing and executing search warrants. I have interviewed and interrogated hundreds of victims, witnesses, and suspects. I have testified in municipal court, magistrate court, state court, and superior court.

The following is the basis for finding probable cause so as to authorize the search warrant for which I have applied: pursuant to a search warrant issued by this court on July 21, 2011, Matthew Daniel a Forensic Computer Specialist with the Georgia Bureau of Investigation began analyzing the contents of items listed in "Exhibit A" for evidence of Murder, in violation of O.C.G.A. §16-5-1 and Burglary, in violation of O.C.G.A. §16-7-1.

000699

It is requested that the Macon Police Department and the FCS of the Georgia Bureau of Investigation be granted authorization to search for, seize and analyze the relevant data from the computer related items described in the "Exhibit A" of this search warrant.

This 11 day of Aug, 20 11

Sworn to and subscribed before me, this 11 day of Aug, 2011

000700

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

State of Georgia

vs.

Items in Exhibit A
Located and Seized from:
Stephen McDaniel
1058 Georgia Avenue Apartment #4

SEARCH WARRANT

To Detective David Patterson, applicant, and to any and all other peace officers for the State of Georgia, Greetings:

Based upon sworn affidavit made in writing before me, and based upon other sworn oral testimony, I find that probable cause exists which authorizes the issuance of a warrant to search the data contained in computers, cameras, cellular telephones and digital storage devices that were located and seized during previously authorized search warrants at 1058 Georgia Avenue Apartment #4, the Apartment of Stephen McDaniel, which contain and are evidence of the crime of Child Pornography in violation of O.C.G.A. 16-12-100. Said items being specifically annotated in Exhibit A attached to this warrant.

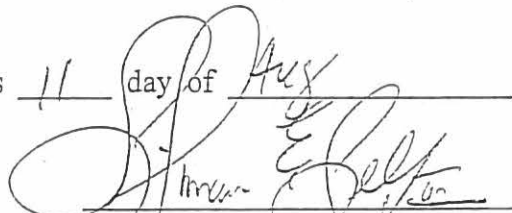
Upon the finding of such evidence pursuant to this Warrant officers are authorized to seize the evidence; provided that an accurate inventory of all property seized is made to this Court upon this Warrant's return.

Therefore, you are hereby commanded to search the location and seize the evidence herein named, leaving behind a copy of this warrant and a receipt of the property seized.

Pursuant to the Georgia Code, officers shall return this Warrant to this Court; the return must show the date and time of the warrant's execution, and must contain an inventory of property seized.

This Warrant shall be executed within ten days of its issuance, or, failing that, be returned to this Court and marked, "Not Executed."

Given under my hand and Seal this 11 day of Aug 2011, at
9:31 o'clock A.m.


TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

000703

RETURN

I received the within search warrant on Aug 11, 20 11 and
have executed it as follows: On _____, 20____
_____ at _____ o'clock _____ M.

The following evidence was seized:

See attached documents from GBI computer specialist Matthew Daniel.

Handwritten mark resembling a large 'H' or a signature.

Subscribed and sworn to and returned before me this 6 day of Feb, 20 12.

Set for Feb 21

Handwritten signature of Tilman E. Self, III

TILMAN E. SELF, III
Judge of the Superior Court
Macon Judicial Circuit
State of Georgia

000704

On Wednesday, August 3, 2011, FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of a Seagate 80.0 GB, serial number 5NH1BXJ8 internal hard drive which was removed from a Dell Latitude D630 serial number CYVHQG1 laptop. The hard drive is reflected as item 7 on GBI evidence receipt E-537029. This device belongs to LAUREN GIDDINGS. GIDDINGS is the victim of murder. STEPHEN MCDANIEL is suspected of committing the murder. The items were seized by City of Macon Police Department.

FCS Daniel connected the hard drive to a Dell XPS processing computer via a WiebeTech hardware write blocker. FCS Daniel then activated the write blocker and verified that the processing computer was able to recognize the hard drive. The hard drive was recognized. FCS Daniel then downloaded the forensic image to a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Dell Latitude D630 ITEM 7

000705

On Tuesday, August 2, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of Kingston 1GB, serial number E0FD-1813 thumb drive. The thumb drive is listed as item 17 on GBI evidence receipt E-537029. This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

FCS DANIEL connected the Kingston 1 GB thumb drive to a Dell XPS processing computer via a WiebeTech USB writeblocker. FCS DANIEL then activated the write blocker and verified that the computer was able to recognize the 1GB thumb drive. The thumb drive was recognized. FCS DANIEL then created a forensic image onto a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Kingston 1GB Thumb Drive

000706

On Tuesday, August 2, 2011, FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of a Kingston 4.0 GB, serial number 0923WF3105B memory card. The memory card is listed as item 2 on GBI evidence receipt E-537030. This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

FCS Daniel moved then switch on the side of the SD card into the lock position which puts the card into read-only mode. When the card is in read-only mode no changes will be made to the suspect media. FCS Daniel then verified that the processing computer was able to recognize the memory card. The memory card was recognized. FCS DANIEL then created a forensic image onto a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Kingston 4GB memory card

000707

On Tuesday, August 2, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of Lexis Nexis 1GB, serial number 36BB-E9BE thumb drive. The thumb drive is listed as item 12 on GBI evidence receipt E-537029. This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

FCS DANIEL connected the Lexis Nexis 1 GB thumb drive to a Dell XPS processing computer via a WiebeTech USB writeblocker. FCS DANIEL then activated the write bloacker and verified that the computer was able to recognize the 1GB thumb drive. The thumb drive was recognized. FCS DANIEL then created a forensic image onto a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Lexis Nexis 1GB Thumb Drive

000708

On Tuesday, August 2, 2011, FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of a Kingston 4.0 GB, serial number 0923WF3105B memory card. The memory card is listed as item 2 on GBI evidence receipt E-537030. This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

FCS Daniel moved then switch on the side of the SD card into the lock position which puts the card into read-only mode. When the card is in read-only mode no changes will be made to the suspect media. FCS Daniel then verified that the processing computer was able to recognize the memory card. The memory card was recognized. FCS DANIEL then created a forensic image onto a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Kingston 4GB memory card item 2

000709

On Tuesday, August 2, 2011, FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of a SanDisk 2.0 GB, serial number BE0636205013D memory card. The thumb drive is listed as item 2 of 2 on GBI evidence receipt E-537030. This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

FCS Daniel moved then switch on the side of the SD card into the lock position which puts the card into read-only mode. When the card is in read-only mode no changes will be made to the suspect media. FCS Daniel then verified that the processing computer was able to recognize the memory card. The memory card was recognized. FCS DANIEL then created a forensic image onto a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – SanDisk memory card item 2-2

000710

On Tuesday August 2, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab to begin the process of examining the forensic image made of a Lexis Nexis 1GB, serial number 36BB-E9BE thumb drive. The thumb drive is listed as item 12 on GBI evidence receipt E-537029. This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. This item was seized by City of Macon Police Department.

The forensic examination for the Lexis Nexis 1GB, serial number 36BB-E9BE thumb drive, listed as item 12 on GBI evidence receipt E-537029 goes as follows: FCS DANIEL loaded the image into EnCase Forensic version 6.17. FCS DANIEL searched through the folders on the drive. Locating no relevant files, FCS DANIEL then searched through all of the photos on the drive using the gallery view of EnCase. Only legal papers and assignments were located on the drive. A log of the steps taken in this examination is included with this summary as attachment 1

Attachment:

Processing Notes – Lexis Nexis 1GB thumb drive

000711

On Wednesday, August 3, 2011, FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of a Toshiba 6.0 GB, serial number X9D72575T internal hard drive which was removed from a Toshiba Protégé 7020CT serial number 39547476A laptop. The hard drive is reflected as item 5 on GBI evidence receipt E-537029. This device belongs to LAUREN GIDDINGS. GIDDINGS is the victim of murder. STEPHEN MCDANIEL is suspected of committing the murder. The items were seized by City of Macon Police Department.

FCS Daniel connected the hard drive to a Dell XPS processing computer via a WiebeTech hardware write blocker. FCS Daniel then activated the write blocker and verified that the processing computer was able to recognize the hard drive. The hard drive was recognized. FCS Daniel then downloaded the forensic image to a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Toshiba Protégé 7020CT

000712

On Wednesday, August 3, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of Western Digital 500GB, serial number WCAUF1719066 external hard drive. The hard drive is listed as item 2 on GBI evidence receipt E-537029. This device belongs to LAUREN GIDDINGS. GIDDINGS is the victim of murder. STEPHEN MCDANIEL is suspected of committing the murder. The items were seized by City of Macon Police Department.

FCS DANIEL connected the Western Digital 500GB external hard drive to a Dell XPS processing computer via a WiebeTech USB writeblocker. FCS DANIEL then activated the write blocker and verified that the computer was able to recognize the 500GB external hard drive. The hard drive was recognized. FCS DANIEL then created a forensic image onto a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Western Digital 500GB External Hard Drive

000713

On Thursday, August 4, 2011, FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation (GBI) Child Exploitation and Computer Crimes Unit (CEACCU) lab for the purpose of processing a pink Sprint Samsung SPH-M800B cell phone, DEC: 268435458003390809. The cell phone is reflected as Item 6 on GBI evidence receipt E-537029. This device belongs to LAUREN GIDDINGS. GIDDINGS is the victim of murder. STEPHEN MCDANIEL is suspected of committing the murder. The items were seized by City of Macon Police Department.

FCS Daniel removed the battery and the micro SD card from the phone to record the model and serial number, then placed the phone in the Faraday box to block all signals to the cellular network. The phone was connected to the CelleBrite UFED device via with the appropriate cable. FCS Daniel then began an extraction of the contacts, images, audio and videos. FCS Daniel also connected the Micro SD card to a write blocker in order to preview the SD card in EnCase. The extraction was exported to a report for the investigator.

A report CD was created and placed in the case file.

000714

On Tuesday August 9, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation Child Exploitation and Computer Crime Unit (GBI) (CEACC) lab to begin the process of examining the forensic copy made of a Toshiba 250.0GB Serial number 40SLT1FZT which was removed from a Sony Playstation 3, which belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

The forensic examination for the hard drive removed from the aforementioned Sony Playstation 3 goes as follows. FCS MATTHEW DANIEL inserted the forensic copy into the Sony Playstation 3, connected the PS3 to an Insignia television and powered on the PS3. First, FCS DANIEL checked the Time & Date settings; the date and time on the Playstation 3 were both consistent with the current date and time. The time zone is set to Eastern. Then FCS DANIEL searched to see if there were any other user accounts on the PS# other than STEPHEN MCDANIELS. His was the only one which was sonofliberty11@yahoo.com. FCS DANIEL then searched for photos and videos that show evidence relating to the murder of LAUREN GIDDINGS, however nothing was located. FCS DANIEL searched through the internet history and bookmarks from the systems internet browser. There was no evidence of murder or LAUREN GIDDINGS located on the machine.

000715

On Wednesday August 10, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI)(CEACCU) lab to begin the process of examining the forensic images made of a Kingston 1GB, serial number EOFD-1813 thumb drive. The thumb drive is listed as item 17 on GBI evidence receipt E-537029. This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

The forensic examination for the Kingston 1GB, serial number EOFD-1813 thumb drive, listed as item 17 on GBI evidence receipt E-537029 goes as follows: FCS DANIEL loaded the image into EnCase Forensic version 6.17. FCS DANIEL searched through the folders on the drive. A folder called "New Folder" was located; inside that folder were 52 images of child pornography. FCS DANIEL immediately stopped his search and consulted with the FORENSIC COMPUTER SPECIALIST SUPERVISOR BETH MESSICK. FCSS MESSICK advised FCS DANIEL to acquire a new search warrant from the Bibb County Superior Court. After speaking with District Attorney GREGORY WINTERS, a new search was signed by Judge TILMAN SELF, and received by FCS DANIEL on Thursday August 11, 2011 (attachment 1). FCS DANIEL was then able to continue searching through the evidence. . A detailed log of the steps utilized in the examination process was maintained and is included with this investigative summary as attachment 2.

Attachments:

1. Search Warrant
2. Processing lab notes

On Thursday August 11, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI)(CEACCU) lab to begin the process of examining the forensic images made of a Blue SanDisk 2GB memory card serial number: BE0632905002B and another Blue SanDisk 2GB memory card serial number : BE0636205013D. These devices belong to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

The forensic examination for the SanDisk 2 GB blue memory card serial number: BE0632905002B, listed as item 1 of 2 on GBI evidence receipt E-537030 goes as follows: Graphic files were viewed using the Gallery View of EnCase; no images of evidentiary value were present. FCS DANIEL located photos of MCDANIEL. MCDANIEL seems to be on vacation in another country. The pictures on this memory card were taken between the dates of 5-15-2007 and 5-30-2007. Nothing of evidentiary value was located. There was no evidence of child pornography located on this memory card. A detailed log of the steps utilized in the examination process was maintained and is included with this investigative summary as (attachment 1).

The forensic examination for the SanDisk 2GB blue memory serial number: BE0636205013D, listed as item 2 of 2 on GBI evidence receipt E-537030 goes as follows: Graphic files were viewed using the Gallery View of EnCase, located photos of what seems to be more vacation photos. MCDANIEL was located in 2 of the photos. The pictures on this memory card were taken between the dates of 5-31-2007 and 6-5-2007. Nothing of evidentiary value was located. There was no evidence of child pornography located on this memory card. A detailed log of the steps utilized in the examination process was maintained and is included with this investigative summary as (attachment 1).

000717

On Thursday August 11, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI)(CEACCU) lab to begin the process of examining the forensic images made of a Beige 3.5 Floppy Disk labeled " hector power point" barcode: 2112, listed as item 19 on GBI evidence receipt E-537029 .This device belongs to STEPHEN MCDANIEL. MCDANIEL is a suspect in the murder of LAUREN GIDDINGS. The items were seized by City of Macon Police Department.

The forensic examination for the 3.5 Floppy Disk labeled "hector power point" barcode: 2112, listed as item 19 on GBI evidence receipt E-537029 goes as follows: Graphic files were viewed using the Gallery View of EnCase; no relevant images were located. FCS DANIEL continued to search for file of interest however no relevant data was located. There was no evidence of child pornography located on this memory card. A detailed log of the steps utilized in the examination process was maintained and is included with this investigative summary as (attachment 1).

Attachment:

Processing Notes – Beige Floppy Disk

000718

On Friday, August 12, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI) (CEACCU) lab for the purpose of making a forensic image of Memorex traveldrive 2GB, serial number 382F-AA7A thumb drive. The thumb drive is listed as item 4 on GBI evidence receipt E-537029. This device belongs to LAUREN GIDDINGS. GIDDINGS is the victim of murder. STEPHEN MCDANIEL is suspected of committing the murder. The items were seized by City of Macon Police Department.

FCS DANIEL connected the Memorex traveldrive 2GB thumb drive to a Dell XPS processing computer via a WiebeTech USB writeblocker. FCS DANIEL then activated the write blocker and verified that the computer was able to recognize the 1GB thumb drive. The thumb drive was recognized. FCS DANIEL then created a forensic image onto a Western Digital 2TB, serial number WMAY01689565 internal hard drive using EnCase V6.17. The image created was verified by matching MD5 hash values. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Memorex traveldrive 2GB Thumb Drive

000719

On Thursday August 18, 2011 FORENSIC COMPUTER SPECIALIST (FCS) MATTHEW DANIEL was located at the Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit (GBI)(CEACCU) lab to begin the process of examining the forensic images made of Memorex travel drive 2GB, serial number 382F-AA7A thumb drive, listed as item 4 on GBI evidence receipt E-537029. This device belongs to LAUREN GIDDINGS. GIDDINGS is the victim of murder. STEPHEN MCDANIEL is suspected of committing the murder. The items were seized by City of Macon Police Department.

The forensic examination for the Memorex travel drive 2GB, serial number 382F-AA7A thumb drive, listed as item 4 on GBI evidence receipt E-537029 goes as follows: FCS DANIEL loaded the image into EnCase Forensic version 6.17. FCS DANIEL first searched through all pictures on the drive in the gallery view of EnCase. No relevant data was located. FCS DANIEL then continued to search through all of the other files and folders on the drive, on the search was complete the recover folders was initiated to locate any deleted folders. No folders were recovered. As a result of this examination, nothing of evidentiary value was located on the Memorex 2GB travel drive. A detailed log the steps utilized in the imaging process was maintained and is included with this summary (attachment 1).

Attachments:

1. Lab Notes – Memorex travel drive 2GB Thumb Drive

000720

FILED
CLERK'S OFFICE
2012 DEC 14 AM 10:56

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

:

DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

v.

:

INDICTMENT: 11-CR-67684

:

STEPHEN MCDANIEL

:

[3.1]
SPECIAL DEMURRER
TO COUNT ONE (MALICE MURDER)

STEPHEN MCDANIEL, through counsel, files this Special Demurrer to Count One of the Indictment, which purports to charge the defendant with "malice murder." Mr. McDaniel asserts that the Indictment is not "perfect in form as well as substance" (*King v. State*, 176 Ga.App. 137, 139(2), 335 S.E.2d 439 (1985)) with respect to this count because it fails to specify the manner in which the intent element is alleged to have occurred. In support of this Special Demurrer, Mr. McDaniel offers the following:

A. Introduction

After the introductory matter in the Indictment, count one charges Stephen McDaniel with the offense of "MURDER, O.C.G.A. § 16-5-1(a) [f]or that the said accused, between the 25th day of June, 2011, and the

30th day of June, 2011, the exact date of the offense being unknown to the Grand Jury, in the State of Georgia, County of Bibb, unlawfully, with malice aforethought, did kill, murder, and cause the death of Lauren Giddings, a human being, by inflicting bodily harm in a manner unknown to the Grand Jury at this time, including decapitation of said victim, with instrument or instruments unknown to the Grand Jury, contrary to the laws of said State, the good order, peace and dignity thereof." The pertinent part of O.C.G.A. § 16-5-1, the murder statute, provides as follows:

(a) A person commits the offense of murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being.

(b) Express malice is that deliberate intention unlawfully to take the life of another human being which is manifested by external circumstances capable of proof. Malice shall be implied where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart.

The specific imperfection in this count, which concerns this Special Demurrer, is that this count fails to specify in which manner, express or implied, the defendant exhibited the alleged "malice aforethought" intent element of the crime. "Where a crime may be committed in more than one way, the failure to charge the manner in which the crime was

committed subjects the indictment or accusation to a proper special demurrer." *Jones v. State*, 246 Ga.App. 482, 483, 540 S.E.2d 622 (2000), quoting *Haska v. State*, 240 Ga.App. 527, 523 S.E.2d 589 (1999).

Most crimes require the combination of both an illegal act (*actus reus*) and an illegal intent (*mens rea*). In O.C.G.A. § 16-5-1, the illegal act consists of causing the death of another human being. The illegal intent consists of two elements: the commission of the illegal act "unlawfully" and with "malice aforethought." Both unlawfulness and malice aforethought must be proven in support of the intent element of malice murder in order to sustain a conviction. Further, and of most importance to this Special Demurrer, malice aforethought can be shown in one of two ways, either "express" or "implied."

B. The Meaning of "Unlawfully"

Even though this Special Demurrer focuses upon the "malice aforethought" half of the intent element, it will be helpful to start with the "unlawfully" element. The first question to answer in analyzing the intent element is what "unlawfully" means. If one kills another human being *lawfully*, the act of killing another when combined with a lawful intent removes the killing from the definition of murder. Thus, in order

to search out the definition of “malice murder,” we must look to those statutes that declare the act of deliberately intending to take the life of another human being to be *lawful*. If a killing does not fit one of the lawful intentions, then, naturally, it is unlawful.

Deliberate intention *lawfully* to take the life of another human being requires evidence of one of the justifications provided in Title 16, Article 2, Chapter 3 – evidence, moreover, that the State must overcome beyond a reasonable doubt.¹ Those justifications include (1) use of deadly force in defense of self and others when one possesses a reasonable belief that such force is necessary to prevent death or great bodily injury or to prevent the commission of a forcible felony (O.C.G.A. § 16-3-21); (2) rendering assistance to a law enforcement officer whose life is being endangered (O.C.G.A. § 16-3-22); (3) defending habitation under certain conditions (O.C.G.A. § 16-3-23); and (4) defending property to prevent the commission of a forcible felony (O.C.G.A. § 16-3-24). Thus, where one of these justifying intentions exists in combination with the act of

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1 Each of the justifications to the crime is called an “affirmative defense” and if the evidence supports it, then the State must disprove it beyond a reasonable doubt. O.C.G.A. § 16-3-28; Moore v. State, 137 Ga.App. 735, 224 S.E.2d 856 (1976).

killing another, then the killing was lawful and cannot constitute murder.

C. Malice Aforethought: "Express Malice"

This now raises the following question when analyzing intent in malice murder: Can one *lawfully* kill another under one of these affirmative defenses and thereby remove the killing from the definition of murder *even if he committed the killing with malice aforethought*? In other words, does the conjunctive "and" in the statute require the showing of *both* unlawfulness and malice aforethought? We know that some criminal homicides done with an unlawful intent to do some other illegal act or where the intent is mitigated by a considerable provocation do *not* constitute malice murder: Felony murder, voluntary manslaughter, involuntary manslaughter, and vehicular homicide are clear instances. It follows, therefore, that malice murder requires both unlawfulness *and* malice aforethought.

So, if a killing has occurred without the presence of one of the justifying intentions, in order for it to be malice murder rather than one of the other forms of illegal homicide, the killer must also have possessed

the intent called "malice aforethought." What is this mental state or intention?

First, before saying what it is, the statute tells us that it may show itself in one of two ways: (1) Express malice or (2) implied malice. With respect to the first: "Express malice is that deliberate intention unlawfully to take the life of another human being which is manifested by external circumstances capable of proof." O.C.G.A. § 16-5-1(b). The expression of "malice" may be exhibited in a variety of ways: "preparations to kill, threats, old grudges, previous difficulties,"² "lying in wait,"³ and "matters of that character."⁴ These various expressions of a mental state are themselves "capable of proof"—evidence of them could be presented to the fact-finder by the State in support of its contention that the defendant possessed the mental state of "malice aforethought" when he caused another person's death. Express malice is the specific intent to kill. When combined with an "unlawful" deliberate intent (that

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2 *Glanton v. State*, 25 Ga.App. 491, 103 S.E. 884 (1920).

3 *Oneil v. State*, 48 Ga. 66 (1873).

4 *Daniels v. State*, 197 Ga. 754, 755, 30 S.E.2d 625 (1944).

is, the absence of a legal justification) to take another's life, the crime of murder has been shown.⁵

D. Malice Aforethought: "Implied Malice"

When, however, the State has no "external circumstances capable of proof" that malice existed at the time of the killing, but malice murder is what the State alleges, then the fact-finder may be asked to *infer* the existence of malice without any expression of it in the observable world, without any "external circumstances capable of proof." In that instance, the State would be focused upon the second sentence in O.C.G.A. § 16-5-

5 A mental state, it should be noted, is not one thing while the expression of it is another. The expression of malice—the preparation to kill, the threat, the grudge, the lying in wait, or similar acts and circumstances—is the mental state called "express malice." They are not two separate things—mental state existing somewhere in the ephemeral world of the mind, on the one hand, and expression of that mental state in the observable world of events, on the other. This may be more a point of philosophy than statutory or case law, and a full exposition of it would require us to trace the arguments and conclusions of modern epistemology, beginning with Rene Descartes' famous creation in the seventeenth century of the so-called "mind-body problem"—the view that intentional thoughts occur in the non-physical world of "mind" but must, somehow, bear a causal relation to the physical actions of the "body" (in other words, how does a non-physical thought cause a physical body to move when the non-physical thought has no extension in space, no mass, by which it could be a causal agent?)—to its solution, or rather its dissolution as a problem at all, in modern philosophy in which the distinction between intentional states and their expression in observable acts has been set aside as a confusion created by an unfruitful commitment to the premise that ideas (propositions, intentions, thoughts, etc.) "represent" the world in some sort of correspondence between idea and world. American jurisprudence tracks very nicely the more pragmatic view of modern philosophy on this point and requires, at least in criminal law, that the *mens rea* of a person accused of a crime be shown by, and consist of nothing more than, proof of his actions in the context of what we normally think a person intended the consequence of those actions to be. For this reason, "express malice" as defined by the murder statute, though archaic in its use of "malice," is relatively clear. As we will see, it is "implied malice" that trades in vague notions of medieval metaphors ("abandoned and malignant heart") and is the real focus of this Special Demurrer.

1(b): "... Malice shall be implied where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart." The first thing to notice about the attempt to define implied malice in this statute is that it requires an absence of proof—"where no considerable provocation appears." In a way similar to the use of "unlawful," in which, as discussed above, malice murder excludes any intention that would justify the killing, implied malice excludes any killing in which the defendant killed after having been considerably provoked. Killing someone under these circumstances—being considerably provoked but having none of the justifications named above—is what the law calls "voluntary manslaughter."⁶

The next thing to notice is that implied malice requires proof of an element in addition to the absence of considerable provocation, namely, an "abandoned and malignant heart." The presence of this second

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6 O.C.G.A. § 16-5-2(a): A person commits the offense of voluntary manslaughter when he causes the death of another human being under circumstances which would otherwise be murder and if he acts solely as the result of a sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a reasonable person; however, if there should have been an interval between the provocation and the killing sufficient for the voice of reason and humanity to be heard, of which the jury in all cases shall be the judge, the killing shall be attributed to deliberate revenge and be punished as murder.

element is required in order to distinguish malice murder where malice must be implied from other killings in which no express malice exists, no considerable provocation exists, no justification exists, and no other imputed intention exists, such as in felony murder, involuntary manslaughter, and vehicular homicide, as well as to distinguish it from accidental killings involving no criminal culpability at all. The phrase, therefore, that sets all these other homicides apart, some of them illegal, some legal, is that the actor possessed an "abandoned and malignant heart" at the time of the killing. This is what the fact-finder is asked to discern about the intention of the defendant in order to find guilt for the crime of malice murder where malice is implied.

Look for a definition of this poetic metaphor, "abandoned and malignant heart," and the Georgia Supreme Court provides the following: "'[I]mplied malice,' as employed in O.C.G.A. § 16-5-1(b), is 'a term which has been defined to mean conduct exhibiting a "reckless disregard for human life."'" *Parker v. State*, 270 Ga. 256, 260, 507 S.E.2d 744 (1988), citing *Morrow v. Hawkins*, 266 Ga. 390, 392(2), 467 S.E.2d 336 (1996). See also *Thomas v. State*, 268 Ga. 135, 141(16), 485 S.E.2d 783 (1997); *Flynn v. State*, 255 Ga. 415, 417(2)(c), 339 S.E.2d 259 (1986); *House v. State*,

252 Ga. 409, 412(3)(c), 314 S.E.2d 195 (1984); *Lackey v. State*, 246 Ga. 331, 337(11), 271 S.E.2d 478 (1980); *Hardy v. State*, 242 Ga. 702, 705(4)(a), 251 S.E.2d 289 (1978). Further defining "reckless disregard for human life," the Georgia Supreme Court writes:

This controlling definition follows the general rule that '[e]xtremely negligent conduct, which creates what a reasonable man would realize to be not only an unjustifiable but also a very high degree of risk of death or serious bodily injury to another or to others—though unaccompanied by any intent to kill or do serious bodily injury—and which actually causes the death of another, may constitute murder.' 2 LaFave and Scott, *Substantive Crim. Law*, § 7.4, pp. 199-200 (1986). If a reckless disregard for human life constitutes implied malice and implied malice is, in turn, the equivalent of a specific intent to kill, then it necessarily follows that reckless disregard for human life may be the equivalent of a specific intent to kill. [Cits. omitted] Evidence that the defendant acted in reckless disregard for human life is, for purposes of demonstrating his guilt of the crime of malice murder, as equally probative as evidence that he acted with a specific intent to kill.⁷

⁷ Reckless disregard for human life, however, is not a *substitute* for implied malice, thereby allowing a jury to use it in place of a finding of malice. Rather, proof of this form of extreme criminal negligence, or reckless disregard for human life, allows the fact-finder to *infer* malice; it allows the fact-finder, that is, to *impute* this mental state to the actor who kills when he was not provoked in any considerable way and for which no other external circumstances exist as proof of the actor's mental state when the killing occurred. As Justice Hunstein writes in her special concurrence in *Parker*:

The difference between instructing a jury that a presumption of malice may arise from reckless conduct and instructing them that reckless conduct and malice are equivalents that can be substituted for one another is not just a matter of mere semantics. A jury is entitled to be instructed how to determine a defendant's state of mind based on the evidence adduced; it is not entitled to be instructed that a lesser mental culpability may be substituted for the required higher mental culpability. A jury hearing the charge upheld by the majority in Division 4 that a reckless disregard for human life may be the equivalent of a specific intent to kill will not understand this charge to mean that they may infer

Parker v. State, 270 Ga. 256, 260, 507 S.E.2d 744 (1998).

In this definition of implied malice, therefore, under Georgia law one need not have a specific intent to kill in order to be found guilty of malice murder. As the Court says in *Parker*, "crimes which are 'defined so as to require that the defendant intentionally cause a forbidden bad result are usually interpreted to cover one who knows that his conduct is *substantially certain* to cause the result, whether or not he desires the result to occur.'" *Parker* at 259, quoting 1 LaFave and Scott, *Substantive Crim. Law*, § 3.7(f), p. 336 (1987). Implied malice, therefore, differs in this important respect from express malice: In implied malice, the defendant does not have a specific intent to kill as he does in express malice, provable as express malice is by external circumstances, but instead exhibits a disregard for human life without any specific intent to cause the end of any particular person's life (that is, the defendant exhibits an "abandoned and malignant heart"). The defendant is deemed to be so reckless in this disregard for human life that the law calls it malice

malice from evidence of reckless behavior: instead, they will understand that they are authorized to substitute criminal negligence for malice.

Parker at 263 (Hunstein, J., specially concurring)

murder when the unintended but substantially certain result of death ensues. It follows that the proof of either express or implied malice may be very different.⁸

E. Conclusion

An "indictment is subject to special demurrer if it is not 'perfect in form as well as substance.'" *Jones v. State*, 246 Ga.App. 482, 483, 540 S.E.2d 622 (2000), *quoting King v. State*, 176 Ga.App. 137, 139, 335 S.E.2d 439 (1985). "Where a crime may be committed in more than one way, the failure to charge the manner in which the crime was committed subjects the indictment or accusation to a proper special demurrer." *Jones* at 483, *quoting Haska v. State*, 240 Ga.App. 527, 523 S.E.2d 589 (1999). One significant danger in an imperfect indictment, of course, is that it does not sufficiently apprise the defendant of the specific crime against which he must defend at trial—including each requisite element, which includes

⁸ In a case discussing Idaho's malice murder statute, one of only four remaining in the United States that still defines malice aforethought as Georgia does, the United States Supreme Court, Brennan, J., writes: "... homicides committed without 'considerable provocation' or under circumstances demonstrating 'an abandoned and malignant heart' (a term of art that refers to *unintentional homicide* committed with extreme recklessness, *see American Law Institute, Model Penal Code* § 210.2(1)(b) Comment, n. 4 (1980))." *Arave v. Creech*, 507 U.S. 463, 475, 113 S.Ct. 1534, 1543 (1993) (*italics added*).

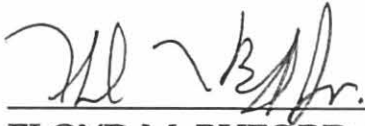
the manner in which the crime was alleged to have been committed when it could have been committed in more than one manner. *D'Auria v. State*, 270 Ga. 499, 512 S.E.2d 266 (1999). See also *Military Circle Pet Center No. 94 v. State*, 181 Ga.App. 657, 353 S.E.2d 555 (1987) (error to deny special demurrer which charged defendant pet store with causing animal pain, suffering, and death by "neglect" but failing to specify the manner in which the neglect was committed when it could have been committed in one of several ways). Such an indictment also fails to protect a citizen against another prosecution for the same offense, which is not measured by how likely such a second prosecution would be but by whether it is possible. U.S. Const., amend. V; Ga. Const., Art. I, § 1, ¶ XVIII.

In this indictment, count one may be committed with express malice or implied malice. As shown above, these two different ways to fit within the meaning of "malice aforethought" in the State's effort to prove the intent element of the crime can differ in vast ways, including, at bottom, a presence of a specific intent to kill (express malice) or no specific intent to kill at all (implied malice). The indictment fails to


specify which manner the malice murder was alleged to have occurred and, thus, is not perfect in form or substance.

This Court, therefore, should grant defendant's Special Demurrer to Count One of the Indictment.

December 14, 2012.



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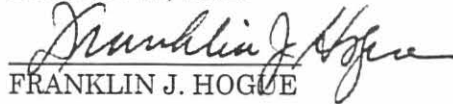
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CERTIFICATE OF SERVICE

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December 14, 2012.


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IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

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DIANNE DRANNEH, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

STATE OF GEORGIA

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v.

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INDICTMENT: 11-CR-67684

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STEPHEN MCDANIEL

:

[3.2]

MOTION TO DECLARE A PORTION OF
O.C.G.A. § 16-5-1 TO BE UNCONSTITUTIONAL

STEPHEN MCDANIEL, through counsel, moves this Court to declare unconstitutional that portion of the murder statute that is too vague and ill-defined to assist a jury in its role as fact-finder. O.C.G.A. § 16-5-1 sets out the prohibition against malice murder and felony murder. This challenge to the statute contends that the portion of it that pertains to malice murder, § 16-5-1(a) and (b), is unconstitutionally vague. In particular, this challenge focuses upon the vague term "malice aforethought," especially as it is used in connection with implied malice, where the phrase "abandoned and malignant heart" appears. This motion is made pursuant to the Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments to the Constitution of the United States, to

Article I, § I, ¶¶ I, II, VII, XI, XIV, XVII and XXVIII of the Georgia Constitution, and to all other applicable state and federal law.

I. Raising a Constitutional Challenge to a Statute

"In order to raise a question as to the constitutionality of a law, at least three things must be shown: (1) The statute or the particular part or parts of the statute which the party would challenge must be stated or pointed out with fair precision; (2) the provision of the Constitution which it is claimed has been violated must be clearly designated; and (3) it must be shown wherein the statute, or some designated part of it, violates such constitutional provision." *Chester v. State*, 262 Ga. 85, 88, 414 S.E.2d 477 (1992).

II. The Challenged Part of the Statute

Mr. McDaniel challenges that portion of the malice murder statute that contains the phrases "malice aforethought" as it is further defined within implied malice as the demonstration of an "abandoned and malignant heart." O.C.G.A. § 16-5-1(a) and (b).

III. The Applicable Provisions of the Georgia and U.S. Constitutions

Mr. McDaniel contends that these phrases violate the due process provision of the Georgia Constitution, which states: "No person shall be deprived of life, liberty, or property except by due process of law." Ga. Const. Art. I, § I, ¶ I. They also violate the due process provision of the United States Constitution, which states: "No person shall . . . be deprived of life, liberty, or property, without due process of law" U.S. Const. Amend. V. The Fifth Amendment applies to the states through the Fourteenth Amendment. We raise, therefore, a challenge to the constitutionality of the statute under both the state and federal Constitutions.

IV. How the Statute Violates These Constitutional Provisions

These phrases purport to proscribe homicides in which an accused possessed a particular mental state while in the commission of the act of killing another person. The challenge here concerns the application of this statute by the fact-finder, in this case a jury, to the facts of this case. The statute is vague and indefinite in guiding a jury in its application and cannot be applied without a violation of due process.

Not all homicide is illegal. A person can kill another in self-defense without violating Georgia law. In most cases, accidental killings fall outside criminal culpability. Georgia law does proscribe homicide, however, in at least five instances: malice murder, felony murder, voluntary manslaughter, involuntary manslaughter, and vehicular homicide. The proscribed act in all these forms of illegal homicide involves the unjustified killing of another human being. What distinguishes one form of homicide from another is the mental state attributed to the accused at the time of the killing.

The mental state attributed to an accused in malice murder is "malice aforethought." It is this mental state that differentiates malice murder from every other form of illegal homicide. "Malice aforethought" can be express or implied. An accused expresses malice, so the statute tells us, when he or she possesses a "deliberate intention unlawfully to take the life of another human being which is manifested by external circumstances capable of proof." O.C.G.A. § 16-5-1(b). But since a person who kills in self defense also may deliberately intend to take the life of another human being, then the only distinction this

portion of the malice murder statute makes in demarcating this proscribed form of killing from others is to insert the word "unlawfully." And what is an "unlawful" killing? In circular fashion, the law answers by saying it's one for which the killer has no legal justification. All this does, however, is say that malice murder excludes self-defense. Whether the killing is unlawful or not is exactly the question at issue, which, of course, in terms of informal logic, makes the statutory attempt to define express malice an instance of the fallacy called *petitio principii*, commonly known as "begging the question." In other words, this first statutory response to the fact-finder's question, "What does it mean to kill with express 'malice aforethought'?" merely answers by saying it means to deliberately intend to kill another person "unlawfully."

The water becomes murkier when the statute moves on to implied malice. "Malice may be implied where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart." O.C.G.A. § 16-1-5(b). The fact-finder is now told that he or she may impute malice to the mental state of the accused when (1) external circumstances have not already proven malice

(i.e., express malice), (2) the accused was not provoked in a "considerable" manner, and (3) the circumstances of the killing reveal a quality of the accused called an "an abandoned and malignant heart."

The first peculiarity to note about implied malice is the statute's drawing of the very distinction between an express and implied mental state. Every mental state is determined by external circumstances. We can never peer into the mind of a person and "see" his or her thoughts. Indeed, a "mind" is not a thing in the first place, but the word we use to denote the activity of thinking, feeling, having intentions, and all the rest of what we include under the heading "mind." All mental states are inferences from actions, which, of course, include words spoken as well as behavior. So, the distinction between "express" and "implied" malice is not a distinction between a *mens rea* to which we have immediate access—that is, access that requires no mediation through words or actions—and one which must be inferred. All *mens rea* must be inferred or implied.

But, leaving that philosophical distinction aside, what kind of distinction is this—the one between "express" and "implied" malice—

which the statute attempts to make? If by “no considerable provocation” the statute means to exclude voluntary manslaughter from malice murder, which seems to be the case when we examine the language of the voluntary manslaughter statute (O.C.G.A. § 16-5-2), then O.C.G.A. § 16-5-1 appears to define malice murder by saying that it excludes self-defense (express malice) and voluntary manslaughter (implied malice) but does include this vague, and still undefined, mental state called “malice aforethought.”

The implied malice portion then adds the colorful metaphor “abandoned and malignant heart.” Look for a definition of this poetic phrase and the law provides none. Left to their own education and experience, therefore, the twelve members of a jury are free to define this archaic metaphor in any manner they choose. The law presumably expects that a jury will not take the phrase literally – that they realize that it is a metaphor. Beyond that assumption, however, the law gives no guidance.

In an effort to assist the jury in this area of law, we assume, the Council of Superior Court Judges suggest to the bench how to instruct

the jury on all this talk about malice murder. The Pattern Jury

Instructions, therefore, provide as follows:

To constitute murder, the homicide must have been committed with malice. Legal malice is not necessarily ill will or hatred, but it is the unlawful intention to kill without justification, excuse, or mitigation. If a killing is done with malice, no matter how short a time the malicious intent may have existed, such killing constitutes murder.

Georgia law does not require premeditation, and no particular length of time is required for malice to be generated in the mind of a person. It may be formed in a moment, and instantly a mortal wound may be inflicted. Yet, if malice is in the mind of the accused at the time of the doing of the act or killing, and moves the accused to do it, such is sufficient to constitute the homicide as murder.

Suggested Pattern Jury Instructions, Criminal, 3rd edition, 2.03.10.

The pattern charge tracks the statute by simply repeating the circular definition given there: "Legal malice . . . is the unlawful intention to kill without justification, excuse, or mitigation." But, as we've already seen, this merely says that malice murder excludes self-defense. Even worse, by way of this instruction jurors are told, in effect: "If you thought malice means 'ill will or hatred,' which is how your dictionary defines it and how you use it in normal speech, it doesn't." And: "If you thought 'aforethought' meant forming a malicious intent to kill before committing the act, a fair understanding when dividing this archaic compound word into its two components-'afore' and 'thought'-well, it

doesn't mean that either." Finally, still paraphrasing: "Malice aforethought, members of the jury, requires neither malice nor aforethought." Then, to leave it all in this muddled condition, the Council doesn't even touch the phrase "abandoned and malignant heart," as if to say: "On that one, ladies and gentleman of the jury, you're on your own."

Most other states have moved beyond these vague, indefinite, and archaic phrases to define murder in clear modern terms of intent to cause death and the causing of death. Thirty-nine states define murder in terms of intent without reference to "malice aforethought" or "malice."¹ Of those thirty-nine, sixteen states add "premeditation," "deliberation," or "design" to their definitions.² Two states use the word "malice," without the adjective "aforethought," but narrow it with the use of "premeditation" and "deliberation."³ Only nine states, which include

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¹ Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

² Colorado, Florida, Kansas, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Mexico, North Carolina, Ohio, South Dakota, Tennessee, Vermont, Washington, and West Virginia.

³ Nebraska and Wyoming.

Georgia, use the phrase “malice aforethought” in their murder statutes.⁴ Of those nine, Georgia stands with only three others—California, Idaho, and Nevada—in persisting in the vague, indefinite, and archaic use of the phrase “abandoned and malignant heart.”

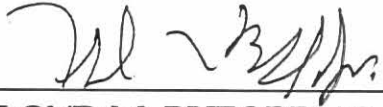
Conclusion

From the dawn of recorded history, the unjustified killing of another human being has been deemed to be morally reprehensible. For the last seven hundred years, the legal tradition of Anglo law, from which American law sprang, has proscribed it. But only four states, Georgia among them, still ask juries to consider its application to the mental state of an accused person by using phrases that find their roots in medieval England. It’s time for Georgia to clarify its murder statute for juries of the twenty-first century. This court should declare the “implied malice” and “abandoned and malignant heart” portions of O.C.G.A. § 16-5-1 to be unconstitutional because in its vagueness it violates both state and federal guarantees of due process.

December 14, 2012.

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⁴ California, Idaho, Iowa, Massachusetts, Nevada, Oklahoma, Rhode Island, and South Carolina.



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Attorney for Defendant
State Bar Number 093805



FRANKLIN J. HOGUE
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State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have
served a copy of the foregoing motion to
the District Attorney for the Macon
Judicial Circuit by delivering it to:

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December 14, 2012.


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IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

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STATE OF GEORGIA

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v.

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INDICTMENT: 11-CR-67684

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STEPHEN MCDANIEL

:

DIANNE BRAHNNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

[3.3]

CHALLENGE TO THE ARRAY OF GRAND JURY
AND TRAVERSE JURY

STEPHEN MCDANIEL, through counsel, files this challenge to the arrays of both the grand jury that indicted this case and the traverse jury from which twelve jurors will one day be selected to try this case

1.

The Sixth Amendment to the United States Constitution dictates that an accused citizen must be tried "by an impartial jury." This right is binding upon the State of Georgia through the application of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

2.

The right to an impartial jury includes the arrays from which the grand jury and traverse jury are selected.

3.

In order to determine whether the mandates of these code sections were properly adhered to, it will be necessary to conduct an investigation, beginning with the procedures used to select the box and venire for the grand and traverse juries. Unified Appeal Rule II (A)(5).

4.

The right to an impartial jury also includes the representation of certain groups of people on the venire and traverse jury panels. Unified Appeal Rule II(A)(5) & (6) sets out the method for challenging the arrays of the grand and traverse juries as they relate to the representation of "whites, blacks, men and women over the age of eighteen-years-old."

The Court is directed to review the grand and traverse jury certificates completed by the Clerk of the Court, which certificates have not yet been conveyed to defense counsel in this case. Unified Appeal Rule II(C).

Upon review of these certificates, it may be necessary for Stephen McDaniel to challenge the findings with the help of a statistical and demographics expert.

5.

In addition to race and gender, there are other classes of people

that must be properly represented in order for the venire and panels to be legally composed. Stephen McDaniel has standing to assert claims of over- or under-representation of a certain class without being a member of that group. *Taylor v. Louisiana*, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975), *Peters v. Kiff*, 407 U.S. 493, 92 S.Ct. 2163, 32 L.Ed.2d 83 (1972).

6.

Stephen McDaniel, therefore, moves this Court to

- A. Complete the grand and traverse jury certificates set out in the Unified Appeal;
- B. Grant an evidentiary hearing on any challenge that the mandates of Title 15, Chapter 12, of the Official Code of Georgia were not properly applied; and
- C. Grant an evidentiary hearing on the representation of certain classes of people in the box and array of the grand jury and traverse jury.

December 14, 2012.

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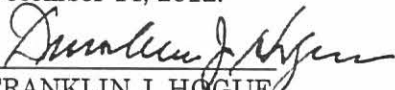
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I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

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IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

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:

DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

v.

:

INDICTMENT: 11-CR-67684

:

STEPHEN MCDANIEL

:

[3.4]

MOTION TO REDACT THE INDICTMENT
TO REMOVE THE NAMES OF THE GRAND JURORS OR,
IN THE ALTERNATIVE, TO PROHIBIT THE INDICTMENT
FROM GOING OUT WITH THE JURY

STEPHEN MCDANIEL, through counsel, moves this court to redact the indictment to remove the names of the grand jurors or, in the alternative, to prohibit the indictment from being sent out with the jury. In support of this motion, the defendant offers the following:

I. Introduction

The indictment in this case, like most indictments, contains the names of the twenty-three grand jurors who had been summonsed during the term in which this case was presented. It is a long-standing custom in most superior courts of this state, which counsel presumes to include this one, to send out the indictment with the jury at the conclusion of the case. Jurors, therefore, can see the names of the grand

jurors who indicted this case. It is possible that one or more traverse jurors may know one or more grand jurors. They may be neighbors, co-workers, acquaintances, friends, or even family members. Counsel has encountered this occurrence on many occasions, a discovery made only through time-consuming voir dire.

Many jurors, moreover, will have had no grand jury experience. Many, if not most, will have little to no knowledge of the role of the grand jury. At no point in a trial, from voir dire to the charge to the jury, does a jury hear anything about the parameters of the grand jury: That the prosecution presents evidence that goes untested by cross-examination, that the rules of evidence do not apply, that hearsay is not only allowed but common, that the defendant is not present nor does he put forward any evidence, that the standard of proof is probable cause, what probable cause means, and that the vote of the grand jury need not be unanimous. Normally, the only comment made during the trial concerning the grand jury is that the indictment is not evidence of guilt. Jurors, however, will see that twenty-three of their fellow community members passed some sort of judgment on the case in order to give it a "true bill," whatever they may think that phrase means.

The risk that the names of the grand jurors may be subjected to improper use by the jury outweighs whatever slight benefit exists – and no permissible benefit does exist – in sending to the jury room an unredacted indictment containing the names of the grand jurors.

The defense sees only three options to avoid the potential risk of improper use of the indictment by the jury: (1) Ask each panel of twelve jurors during voir dire if they know any of the grand jurors by reading the twenty-three names to each panel, which method would include the necessary follow-up questions with each person who answers in the affirmative, thus making jury selection much longer; (2) redact the indictment by masking the names of the grand jurors before sending it out; or (3) don't send out the indictment with the jury at all.

II. Argument and Citation of Authority

A. Defendant's Right to Fair and Impartial Jury

Every accused citizen is entitled to a trial by an impartial jury. U.S. Const., amend VI; Ga. Const., Art. I, § 1, ¶ XI. In order to assure the defendant of an impartial jury, nothing should be presented to the jury that may be subjected by them to improper use. Allowing jurors to review the names of grand jurors may prejudice them against the

defendant and for the State. The defense may question the jury panel concerning their knowledge of the grand jurors—and will do so if the court denies this motion—but two other methods of avoiding potential juror bias will save time, are easy to accomplish, and will not prejudice the State in any way. This court should either order the indictment to be redacted to mask the names of the grand jurors or prohibit the indictment from going out with the jury.

B. Persuasive Authority in Defendant's Favor

In a concurring opinion, Chief Justice Hunt wrote for the Georgia Supreme Court:

Sending the indictment out to the jury is certainly a practice of long standing, but no rule or statute requires it. In fact, at trial the indictment serves no greater purpose than pleadings in civil cases which, in today's practice, rarely ever go to a jury. It is certainly well within the trial court's discretion, on motion by the defendant, to exclude the indictment and the plea of not guilty thereto, and to send to the jury a verdict form which presents the issues as they exist at the close of the evidence.

Lumpkins v. State, 264 Ga. 255, 443 S.E.2d 619, 622 (1994).

One other source of persuasive authority addresses this issue. The ABA Standards suggest that the trial court, at the defendant's request, should consider whether the indictment may be subjected to improper

use by the jury. ABA Standards, *Trial by Jury*, Vol. III, Standard 15-5.1 ("Materials to Jury Room").

C. Redacting the Indictment is Easy

In this case, the presence of the names of the grand jurors on the indictment will provide no aid to the jury in considering guilt or innocence, the defendant may be unduly prejudiced by the presence of the un-redacted indictment in the jury room, and the jury may well put the indictment to an improper use by considering the identity and number of other members of the community who have already conducted some sort of inquiry, the nature of which may be remain a mystery to the petit jury, and reached a decision adverse to the defendant.

The court should give careful consideration to whether any reason exists for sending an un-redacted indictment into the jury room that contains the names of the grand jurors. The court should reject out of hand any reason that suggests that the indictment should remain un-redacted because that's the form in which the grand jury returned it. No law requires indictments to remain un-redacted at all times under any circumstances. It is common to redact indictments when they include

notice to a defendant, for example, that the State intends to prove in aggravation of sentencing that he has prior convictions. The indictment undergoes redaction to remove the charge of felon in possession of a firearm, for example, in cases involving that charge when the defendant moves for a bifurcated trial. The process of redacting requires nothing more than a copy machine and some blank paper. It can be accomplished in a few minutes.

D. The State Has No Sound Argument Against This Motion

Counsel anticipates an argument from the State, if the State opposes this motion at all, that he has heard on other occasions when he has made this motion. That argument goes something like this: "First, no law requires that the indictment be redacted by removing the names of the grand jurors. It is not reversible error to deny the defendant's motion. Therefore, since no law requires the court to do it, don't do it. Second, we've never done it that way in this court and we shouldn't start now." These two arguments share a common form in that they appeal to a desire to preserve a custom where no higher authority has forced a change upon us. Since they share this common form, they can be criticized for the same fallacy.

Since the law follows logic—at least most of the time—it is important to note that this argument exhibits a classic fallacy of reasoning called *argumentum ad antiquitatem* (“appeal to tradition”). This argument takes the form of “this is right because we’ve always done it this way.” But this form of reasoning suffers from two flaws: (1) It assumes that when the practice was introduced, it was necessarily correct; (2) it further assumes that if there was a justification for the practice when it was introduced, that it is still valid. With respect to both flaws, the law is silent regarding any possible justification that may have been given when this custom began. But even if one existed way back, it no longer does, since the possible misuse of this information by a jury outweighs any conceivable permissible use a jury could make of it. Indeed, counsel always invites the court or prosecuting counsel to identify a single *good* use to which a jury may put this information. The challenge is usually met either with silence or simply a rephrasing of the tired appeal to tradition.

No benefit outweighs the burden—the potential and actual harm—caused by displaying to a petit jury the names of the twenty-three grand jurors who chose to indict a defendant. And even though the best law this defendant can cite in favor of this motion comes from a concurring

opinion by a former Chief Justice of the Georgia Supreme Court and a standard promulgated by the American Bar Association, this does not mean that this custom should continue. It simply means that neither the court of final appeal in this State nor our legislature have yet to condemn it. This court, however, may exercise its sound discretion in seeking to guarantee a fair trial by granting this motion.

III. Conclusion

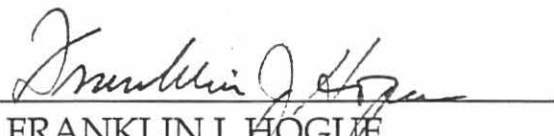
This court, therefore, should redact the indictment to mask the names of the grand jurors or keep the indictment from going out with the jury. In addition, and in order to address any concern that the jury will need the indictment in order to avoid being confused, a verdict form can be used that the jury can easily follow. Nevertheless, the defendant prefers that the first alternative suggested be the one used here, namely, to redact the indictment to remove the names of the grand jurors.

December 14, 2012.

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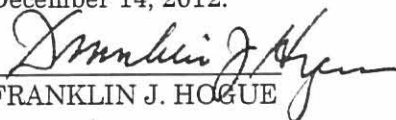
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
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December 14, 2012.


FRANKLIN J. HOGUE

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IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

2012 DEC 14 AM 10:56

STATE OF GEORGIA	:	DIANNE BRANNEN, CLERK SUPERIOR COURT OF BIBB COUNTY GEORGIA
	:	
v.	:	INDICTMENT: 11-CR-67684
	:	
STEPHEN MCDANIEL	:	

[3.5]
MOTION TO PROHIBIT THE STATE FROM PROPOUNDING
TO THE VENIRE ANY QUESTION THE SUBSTANCE OF WHICH
ASKS WHETHER A PERSON CAN
"SIT IN JUDGMENT" ON ANOTHER

STEPHEN MCDANIEL, through counsel, moves this court to prohibit the State from propounding to the venire any question the substance of which asks whether a person, for religious reasons, is unable "sit in judgment" on another. In support of this motion, the defendant offers the following:

I. Introduction

In many trials in many places, mostly rural but even in some urban circuits, defense counsel has heard prosecuting attorneys propound to the venire a question such as this: "Does anyone believe that your religious faith prohibits you from sitting in judgment on another person?" In almost every court where counsel has heard this question

posed, or something like it, a few potential jurors answer in the affirmative, then explain themselves by talking about how God is the only judge, that Jesus taught that one should never judge lest one be judged, and that they do their best to follow the Bible to the letter. Since no knowledgeable minister, preacher, or Sunday School teacher would foist such an ill-informed and incorrect view upon their church members — and there's little evidence that any church teaches this uninformed and erroneous view of a civic duty — and since Jesus himself never imposed such an impossible prohibition on his listeners and followers, and, finally, since this purported belief is a specious and thinly-veiled attempt to avoid a civic duty, the question should be prohibited. Rather than plant an idea that may not have existed in the mind of a juror who wants to skirt a civic duty, a better question, if such a belief genuinely exists in any juror's mind, would be: "Is there any reason that you think you cannot serve on a criminal jury?" If a juror thinks that his or her faith prohibits the rendering of a judgment in a criminal case, this more general question gives the juror the opportunity to say so, without first having had that idea planted when it might not otherwise have existed.

II. Argument and Citation of Authority

A. Defendant's Right to Fair and Impartial Jury

Every accused citizen is entitled to a trial by an impartial jury. U.S. Const., amend VI; Ga. Const., Art. I, § 1, ¶ XI. In addition, every citizen is guaranteed due process of law. U.S. Const., amend. V and XIV; Ga. Const., Art. I, § 1, ¶ 1. In order to assure the defendant a trial by an impartial jury and due process of law, no question should be posed to venire members that allows or invites them to disqualify themselves with a bias or infirmity that, more likely than not, does not exist in the first place.

B. Two Flaws Contained Within the Question

1. The Bible does not prohibit "judging."

Many potential jurors with Christian commitments hear the phrase "sit in judgment on another," or any similar phrase, and, if they can identify the source at all, think of the words attributed to Jesus in the Gospel according to Matthew and the similar saying in the Gospel according to Luke. In Matthew, Jesus says: "Do not judge, or you too will be judged. For in the same way you judge others, you will be judged,

and with the measure you use, it will be measured to you." Matthew 7:1-2 (New International Version). Luke records the comment this way: "Do not judge, and you will not be judged. Do not condemn, and you will not be condemned. Forgive, and you will be forgiven." Luke 6:37 (New International Version). Many people know these two sayings in the King James Version: "Just not, lest ye be judged." The saying is attributed to Jesus on the occasion of the "Sermon on the Mount," soon after Jesus chose his twelve apostles, after which he spoke to a large crowd of followers on a hillside.

In both passages, the Greek word in the original text is "krino," which, like all words, acquires its meaning from its context. A clear distinction exists between the kind of "judgment" that means pronouncement of another's eternal fate, reserved for God, and the everyday judgment or "discernment" every person exercises when choosing between alternate courses of action or beliefs, from the mundane to the monumental. Indeed, soon after the passage recorded in Luke, quoted above, we find this exchange between Jesus and Simon, in which the same word is used:

'Simon, I have something to tell you.'

'Tell me teacher,' Simon said.

'Two men owed money to a certain moneylender. One owed him five hundred denarii, and the other fifty. Neither of them had the money to pay him back, so he canceled the debts of both. Now which of them will love him more?'

Simon replied, 'I suppose the one who had the bigger debt canceled.'

'You have *judged* ["krino"] correctly,' Jesus said.

Luke 7:40-42.

As one commentator says of this distinction between judgment about eternal fate and everyday discernment:

All discernment involves formation of judgment. Jesus does not ask us to surrender the judgment of discernment. We are forbidden damning, not discerning. The judgment we are asked to surrender is the judgment of condemnation, i.e., snatching from God the verdict of the last judgment. We are not to make final judgment on anyone, to speak assuredly of people's real character, to pretend that we know God's verdict on other people's lives at the final judgment.

Matthew: A Commentary, F. Dale Bruner, (Word Publishing Co., Dallas, TX, 1987), p. 272.

2. The question trades on a fallacy of ambiguity called "equivocation."

"Equivocation" is a fallacy of ambiguity in which a word is given an alternate meaning because it sounds like, and is often spelled like, another word with a different meaning. Probably the most well-known example of equivocation, though there are many, comes from Abbott

and Costello's famous "Who's on first" routine, where "Who," "What," and "I Don't Know" equivocate between their normal usage and the proper names of baseball players.

In this instance, regarding "judging," the prohibition against "judging" appears to suggest that one should not exercise discernment, such as pronouncing a verdict concerning another's alleged criminal behavior, when in fact the phrase prohibits another sort of judgment altogether. It becomes clear that this misreading of the saying by Jesus cannot possibly be maintained consistently in a person's life, when misread this way. After all, those venire members who claim that Jesus prohibits their rendering a verdict in a criminal case exercise the same sort of judgment all day every day, including the very judgment they exercised the morning they came to court when they "judged" that it was better to wear the red shirt rather than the blue shirt, drive down Main Street instead of the back roads, and a thousand other similar judgments along the way.

C. How to Elicit an Honest Opinion on this Topic, Even if It's an Incorrect Understanding of the Saying

It may be the case that a few jurors honestly but incorrectly believe that their Christian commitment, or religious faith, includes a prohibition against rendering a verdict in a criminal case. In those few instances, opportunities always exist in voir dire for such a juror to expose this belief. When such a juror reveals a fixed belief that rendering a verdict would violate the rules of his faith, then that juror could be excused. This motion merely seeks to prohibit the State from asking an ill-founded and logically faulty question as if it was a sound question when such is not the case.

The law merely asks jurors to exercise their discernment in choosing between the verdicts "guilty" and "not guilty." This decision does not require a "judgment" in the sense conveyed by the phrase "sit in judgment on another person" as the Court or the State may pose to the venire. The phrase evokes in the minds of those whose biblical knowledge is rudimentary or simply wrong an image of their being asked to usurp the place of God in "judging" the ultimate fate of a human being. Nothing could be further from the truth.

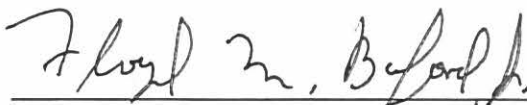
If a juror has volunteered this popular but erroneous understanding of what it means to render a verdict in a criminal case,

perhaps in response to an appropriate question like, "Is there any reason that you feel you cannot serve on a criminal jury?" then it would be appropriate for the court or either party to inquire into this misapprehension to determine whether it is a fixed opinion such that the person feels prohibited by God from rendering a verdict in a criminal case. In that scenario, the juror may be stricken for cause. But asking the misleading question about "sitting in judgment on another" invites those to whom it has not previously occurred to respond in a way that is almost sure to eliminate them from their civic duty.

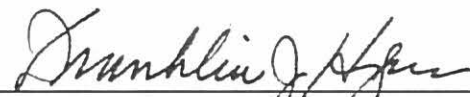
III. Conclusion

Thus, for the sake of an impartial jury and due process, this question to the venire should be prohibited.

December 14, 2012.



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CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

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IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

FILED
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2012 DEC 14 AM 10:56

STATE OF GEORGIA :
 :
v. : INDICTMENT: 11-CR-67684
 :
STEPHEN MCDANIEL :

DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

[3.6]
MOTION TO WITHHOLD IDENTIFICATION
TO THE ALTERNATE JURORS THAT THEY ARE ALTERNATES
UNTIL THE CLOSE OF THE EVIDENCE

STEPHEN MCDANIEL, through counsel, moves this Court to withhold the identification to the alternate jurors that they are alternates until the close of the evidence.

O.C.G.A. § 15-12-168 provides that in a felony case the court may allow the selection of one or more additional alternate jurors. Alternate jurors shall take the same oath as the jurors already selected. They shall be seated near the jury, with equal opportunity for seeing and hearing the proceedings, and shall attend at all times upon the trial with the jury. They shall obey all orders and admonitions of the court to the jury.

When the regular jurors are ordered kept together in any case, the alternate jurors shall also be kept in confinement with the regular jurors.

See O.C.G.A. § 15-12-170.

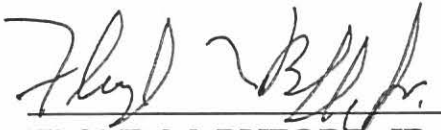
O.C.G.A. § 15-12-172 provides for the replacement of alternate jurors with those members of the jury in the event that a juror becomes incapacitated. In that event, an "alternate juror taking the place of any incapacitated juror shall thereafter be deemed to be a member of the jury of 12 and shall have full power to take part in the deliberations of the jury and the finding of the verdict." O.C.G.A. § 15-12-172.

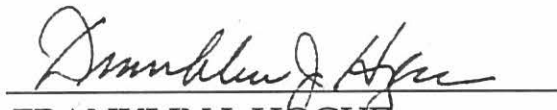
If the Court informs an individual juror at the beginning of the trial that he or she is an alternate, the possibility exists that the alternate juror's sense of responsibility for the verdict will diminish. An alternate juror who goes into the trial with the presumption that he or she will not have to make the ultimate decision may be less attentive than the other jurors. This possibility, based upon this knowledge by an alternate, would be eliminated if the alternate does not know that he or she is an alternate. No logical reason supports disclosure to any of the jurors which of them is an alternate juror until the time deliberations are set to begin.

Stephen McDaniel requests, therefore, that the Court withhold the identification to the alternate jurors until the close of the evidence. In

addition, and in order to give effect to this motion, when the clerk identifies the jurors who have been selected, their names should be called in random order so that the final juror or jurors called cannot infer that they are alternates because they were questioned in the last panel during voir dire and seated after the 12 jurors ahead of them whose names were called first.

December 14, 2012.


FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

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Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.


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IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

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STATE OF GEORGIA

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v.

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INDICTMENT: 11-CR-67684

:

STEPHEN MCDANIEL

:

DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

[3.7]

MOTION TO ADMINISTER THE BAILIFFS' OATH
PUBLICLY AND IN THE PRESENCE OF THE JURY

STEPHEN MCDANIEL, through counsel, moves this Court to order that the bailiffs' oaths of office be administered in public and in the presence of the jury.

O.C.G.A. § 15-12-140 requires that a special oath be given to each person who assumes the duties of a bailiff in the superior court. That oath as follows:

You shall take all juries committed to your charge during the present term to the jury room or some other private and convenient place where you shall keep them without meat or drink (water excepted), unless otherwise directed by the court. *You shall make no communication with them yourself nor permit anyone to communicate with them, except by leave of the court.* You shall discharge all other duties which may devolve upon you as a bailiff to the best of your skill and power.

O.C.G.A. § 15-12-140 (emphasis added). See *Battle v. State*, 234 Ga. 637, 217 S.E.2d 255 (1975) (error for bailiff to communicate with the jury foreman regarding sentencing).

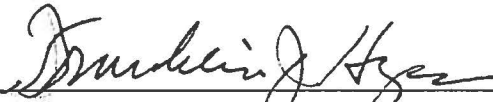
The oath of a bailiff must be given in open court. This is not just meaningless symbolism. The bailiffs' oath is a solemn commitment to the Court, the defendant, and the jurors that the bailiffs will perform their duties in the appropriate manner. The significance of the bailiffs' oath educates the jury as to the function and duties of the bailiff and his or her professional obligation to abide by the oath administered by the Court. The oath, moreover, advises the jury about their own relationship with the bailiffs, informing them about the limitations the Court places upon the jurors' communications with the bailiffs. In order for the oaths to be more than symbolic, the giving and the taking of the bailiffs' oath must be made in open court before the assembled jurors.

Stephen McDaniel requests, therefore, that the Court administer the bailiffs' oath publicly and in the presence of the jury.

December 14, 2012.



FLOYD M. BUFORD JR.
Attorney for Defendant
State Bar Number 093805



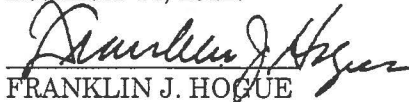
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

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December 14, 2012.


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IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

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STATE OF GEORGIA : DIANNE BRANNEN, CLERK
: SUPERIOR COURT OF
: BIBB COUNTY GEORGIA
v. : INDICTMENT: 11-CR-67684
:
STEPHEN MCDANIEL :

[3.8]
MOTION FOR DAILY TRANSCRIPT

STEPHEN MCDANIEL, through counsel, requests this Court to order the Court Reporter to provide a daily transcript of court proceedings. This motion is made pursuant to the rights and guarantees set forth in the Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments to the Constitution of the United States and to the provisions of Article I, § I, ¶¶ I, II, XI, XII, XIV, XVI, and XVII of the Constitution of the State of Georgia. In support of this Motion, Defendant shows the following:

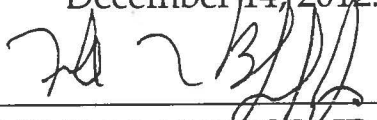
This is the capital prosecution of Defendant and these proceedings could result in his death by lethal injection. This case involves numerous complex evidentiary and procedural issues. A review of the daily proceeding is absolutely essential so that Defense counsel can adequately

safeguard the due process rights of Defendant and adequately prepare his defense.

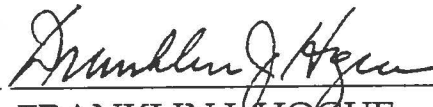
The State has listed numerous possible witnesses, several of whom, it is believed, will testify contrary to previous statements (both oral and written) and defense counsel must be prepared to adequately cross-examine those witnesses. The only way in which defense counsel can provide effective assistance of counsel is to be provided with a daily transcript of all court testimony.

Thus, Defendant respectfully requests that this Court order the Court Reporter provide daily transcripts of the testimony in this case.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



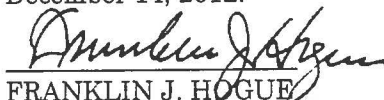
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DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

INDICTMENT: 11-CR-67684

[3.9]

MOTION FOR AN ORDER REQUIRING THE DISTRICT
ATTORNEY TO RESPOND IN WRITING TO EACH MOTION
WHICH IS CONTESTED BY THE STATE

STEPHEN McDANIEL, through counsel, moves this Court, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, § I, ¶¶ I, II, IV, V, VII, IX, X, XI, XII, XIII, XIV, XVI, XVII, XVIII, XXIV and XXVIII of the Constitution of the State of Georgia, international law, as well as statutory and jurisprudential authorities cited below, and all other applicable constitutional, statutory, treaty, customary international law, evolving international standards, and jurisprudential authority to order the District Attorney to respond in writing to each motion filed by Defendant that the State contests. In support of this motion, Defendant shows this Court the following:

A motion is a request of the Court for a specific form of relief. Virtually every jurisdiction recognizes the use of the motion to address issues relevant to either the prosecution or defense of a criminal case. Several reasons exist for requiring the prosecution to respond in writing to each motion filed by the defense, and to require that the prosecution cite the authorities on which they rely.

I. Argument

A. Judicial Economy:

First, there are considerations of judicial economy. There are many motions, which will require evidentiary hearings. Should the State concede that the motion should be granted, much time will be saved, and the County will not bear the expense of witnesses who would otherwise be required to testify on the motion. Requiring the disputed issues in this case to be reduced to writing would focus the respective positions of the defense and the prosecution, thus enabling this Court to more easily and accurately rule on those issues. In addition, the State's response to each motion will also provide this Court with additional authority, putting the Court in a better position to decide the issues.

In civil actions, one party is uniformly required to respond in writing to the pleadings filed by the other party. It would be very odd to suggest that a rule which applies where a few thousand dollars or a widget are at stake should not apply where a life is at stake.

B. Notice to the Defense:

Additionally, Defendant has a right to notice as to the State's position regarding the issues in the case. See *Lankford v. Idaho*, 500 U.S. 110 (1991). Counsel for Defendant cannot prepare for hearings unless the defense knows what position the prosecution is going to take with respect to the issues raised in defense pleadings.

Unless the State is required to respond in writing to the issues raised by Defendant's counsel through the defense motions, defense counsel will not know what the State's responses will be -- if any, until the oral argument at the motions hearing. Surely the mandates set forth in the Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States and the mandates enumerated in Article I, § I, ¶ XIV of the Constitution of the State of Georgia require more.

C. Procedural Default:

For years, the prosecuting attorneys have urged upon the appellate courts various procedural defaults, in an effort to assure the execution of indigent defendants whose lawyers have failed to preserve their rights. It is clear, at this point in the development of the law, that procedural rules must be a two-way street: "What's sauce for the goose is sauce for the gander." *Alcerte v. McGinnis*, 898 F.2d 69, 72 (7th Cir. 1990). "[T]he Due Process Clause . . . forbids enforcement of . . . rules unless reciprocal rights are given to criminal defendants." *Wardius v. Oregon*, 412 U.S. 470, 472 (1973). For this reason, procedural rules have been applied with equal force against the prosecution as against the defense. See, e.g., *Wilson v. O'Leary*, 895 F.2d 378, 384 (7th Cir. 1990); *Alcerte v. McGinnis*, 898 F.2d at 71-72; *Russell v. Rolfs*, 893 F.2d 1033, 1038 (9th Cir. 1990); *Francis v. Rison*, 894 F.2d 353, 355 (9th Cir. 1990); *Cole v. Young*, 817 F.2d 412, 415 (7th Cir. 1987); *Merlo v. Bolden*, 801 F.2d 252, 255 (6th Cir. 1986); *Barrera v. Young*, 794 F.2d 1264, 1267-68 (7th Cir. 1986); *Boykins v. Wainwright*, 737 F.2d 1539, 1545 (11th Cir. 1984); see also *Hitchcock v. Dugger*, 481 U.S. 393, 399 (1987) (waiver of harmless error by failing to raise it).

Therefore, unless the prosecution attorneys announce what their

position is, and why, they will be defaulted from arguing varying positions on any appeal. This is only fair - when the accused loses by default, he or she dies; when the prosecution loses by default, the State may still get to keep Defendant in prison under a life sentence without the possibility of parole.

D. Citation of Authority:

Courts require parties to "support propositions of law with reasons and authorities." *Pate v. State*, 419 So.2d 1324, 1325-26 (Miss. 1982). This not only ensures notice and fairness to the opposing party, but protects the Court from being misled into committing errors of law, especially reversible ones. The State must also provide authority in this case. Therefore, unless the prosecution cites authority in responses, this Court should rule that the prosecution waived their opportunity to argue to the Court that the motion should not be granted:

[The] rules apply to the government as well as to defendants. [The State] has forfeited what would have been its best argument. If as a result a violent offender goes free, the [state prosecutor] must understand where the responsibility lies - with his own staff.

Wilson v. O'Leary, 895 F.2d at 384; accord *Alerte v. McGinnis*, 898 F.2d at 72 ("the state has only itself to blame for the defect that has undone this appeal").¹

Only in this way will the Court be able to assure itself that it is not committing legal errors.

E. Court Rules and the Uniform Appeal:

The Uniform Rules for Superior Courts were formulated in accordance with the directive of Article VI, § IX, ¶ I of the Constitution of the State of Georgia of 1983. Rule 31 of the Uniform Rules for Superior Courts is entitled "Motions, Demurrers, Special Pleas, and Similar Items in Criminal Matters." U.S.C.R. Rule 31.1 requires that a defendant in a criminal case file all motions at or before arraignment, unless the time for filing such motions is extended by the trial judge in writing.

The revised Unified Appeal which prescribes the procedures by which death penalty cases are to be administered by the trial court

Obviously there is sometimes no authority for a specific proposition, in which case the parties must analogize. Additionally, precedent is frequently overruled, so the presence of seemingly "dispositive" precedent is not actually dispositive of any issue. Finally, it may appear that new issues arise when evidence is adduced at a hearing. Clearly, the parties are not barred from arguing – and, if necessary or ordered by the Court, briefing – such issues.

provides that one of the purposes of the Unified Appeal "Outline of Proceedings" is "before, during and after trial, . . . [i]nsuring that all legal issues which ought to be raised on behalf of the defendant have been considered by the defendant and defense counsel and asserted in a timely and correct manner." U.S.C.R. Rule 34(I)(A)(1).

The Uniform Rules for Superior Courts mandate that the responsibility for both raising issues and waiving issues is on the defendant. Primarily, issues are raised by motions. It is patently unfair to require the defendant to either raise an issue in writing or waive it and *not* to require a written response from the State whenever the State contests a particular issue.

Rule 6 of the Uniform Superior Court Rules, "Motions in Civil Actions," provides that "every motion made prior to trial, except those consented to by all parties, when filed shall include or be accompanied by citations of supporting authorities." U.S.C.R. 6.1.

Uniform Superior Court Rule 6.2 provides that,

"[u]nless otherwise ordered by the judge, each party opposing a motion shall serve and file a response, reply memorandum,

affidavits, or other responsive material not later than 30 days after service of the motion." (emphasis added).

F. The Prosecutor's Ethical Duty:

A prosecutor has a duty to uphold the dignity of the court and respect its authority, as well as maintain public confidence in the judicial system and the legal profession. *United States v.*

Alabama, 571 F.Supp. 958 (N.D. Ala. 1983); American Bar

Association, *Standards of Criminal Justice* §3-1.2(b); *Adams v. State*,

198 So. 2d 255 (Ala. 1967) (the primary duty of the office of the

District Attorney is to see that justice is done).

The role of the public prosecutor has long been recognized as a special one:

The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during the trial, the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice

the accused is to be given the benefits of all reasonable doubts.

Georgia Code of Professional Responsibility, EC 7-13; see also, *Burns v. State*, 172 Ga.App. 645, 324 S.E.2d 197 (1984); American Bar Association, *Standards*, 3-1.2(c) (prosecutor has responsibility to guard the rights of the accused as well as those of society at large); American Bar Association, *Annotated Model Rules of Professional Conduct*, Rule 3.8 comment [1]; O.C.G.A. § 15-18-2 (oath requiring district attorney to discharge duties faithfully and impartially).

The District Attorney and his or her assistants have an obligation to respond to each defense motion if the State intends to oppose the relief requested therein. To wait until the motions hearings and then orally respond fails to satisfy the obligations placed upon the prosecutor to actively address Defendant's appeals for relief from violations of her constitutional rights. If the State has a legitimate interest in objecting to a particular motion, then the prosecutor should set forth his opposition to those requests in such a timely manner that the defense may be prepared to respond to the State's argument and cited authority.

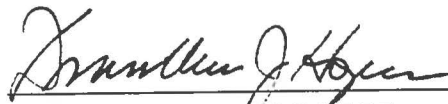
Thus, for the foregoing reasons, Defendant requests this Court

issue an order directing the District Attorney to respond in writing, within a reasonable period of time, to all motions filed by the defense which the State contests.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



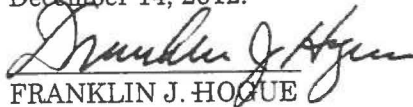
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.


FRANKLIN J. HOGUE

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

FILED
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2012 DEC 14 AM 10:56

STATE OF GEORGIA

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v.

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STEPHEN MCDANIEL

:

DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

INDICTMENT: 11-CR-67684

[3.10]

MOTION FOR THE COURT REPORTER'S TAPES AND NOTES TO
BE MADE A PART OF THE RECORD OF THESE PROCEEDINGS

STEPHEN McDANIEL, through counsel, moves this Court, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, § I, ¶¶ I, II, IV, V, VII, IX, X, XI, XII, XIII, XIV, XVI, XVII, XVIII, XXIV and XXVIII of the Constitution of the State of Georgia, international law, as well as statutory and jurisprudential authorities cited below, and all other applicable constitutional, statutory, treaty, customary international law, evolving international standards, and jurisprudential authority to order that all audio tapes or notes used, consulted, maintained or in any way connected with this case be preserved and made a part of the record. In support of this motion, Mr. McDaniel shows the following:

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478-738-0859 (fax)

I. Argument

The failure to record the entire proceedings in the trial court and make them part of the record violates a defendant's right to full review of his case on appeal, his right to the assistance of counsel on appeal and in pursuing post-conviction remedies, and his right to equal access to courts which may review his conviction on either appeal or collateral attack as guaranteed by the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. See, e.g., Gardner v. Florida, 430 U.S. 349 (1977); Gregg v. Georgia, 428 U.S. 153 (1976); Britt v. North Carolina, 404 U.S. 226 (1971); United States v. Selva, 559 F.2d 1303 (5th Cir. 1977); United States v. Brumley, 560 F.2d 1268, 1281 (5th Cir. 1977); Wilson v. State, 246 Ga. 672, 273 S.E.2d 9, 12 (1980) ("in view of [the Georgia Supreme Court's] responsibility of the appellate review of cases in which the death penalty was imposed, an accurate and complete transcript is essential"); Montford v. State 164 Ga.App. 627, 629, 298 S.E.2d 319, 320 (1982).

The Georgia Supreme Court recognized the necessity of fully transcribing all proceedings in capital cases, and has required, through the

Unified Appeal, that a "complete transcript of all phases of the case" be made. See Unified Appeal, § IV.A.4.

For purposes of this rule, the term "complete transcript" shall include a complete transcription of: all pre-trial hearings; the selection of the jurors, including challenges for cause; the voir dire examination and the striking; the opening statements and closing arguments of counsel; the examination of the witnesses; all documentary evidence, including photographs; all oral motions (whether pre-trial, during trial or after trial) and all hearings on oral and written motions; all oral objections and all hearings on oral and written objections; all conferences and hearings of every description and for every purpose conducted between court and counsel, including all bench and chamber conferences; all oral stipulations of counsel; the charges of the court to the jury during the guilt-innocence and sentencing phases of the proceedings; the publication of the verdict and the polling of the jury; the pronouncement of sentence; and all oral comments, instructions, directions, admonitions, rulings and orders of the court in the case from the first proceeding through conclusion of the trial. *Id.* (emphasis added).

It is common practice in this jurisdiction for the Court Reporter to make an audio tape recording in addition to the manual transcription of the testimony and arguments in criminal cases. The audio tape recordings that may be made during this trial are substantive evidence of

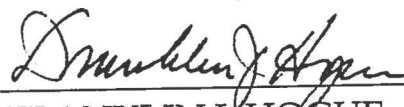
the entire proceeding and, therefore, the tapes themselves must be included and made a part of the record of this case.

Thus, for the foregoing reasons, Defendant requests this Court order the Court Reporter to keep and maintain the original audio tapes and notes made or used in this case and to include those original tapes and notes as part of the record in this case.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



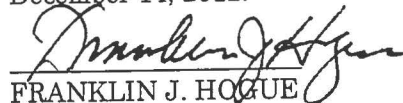
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.


FRANKLIN J. HOGUE

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IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

FILED
CLERK'S OFFICE
2012 DEC 14 AM 10:56

DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

STATE OF GEORGIA

:

:

v.

: INDICTMENT: 11-CR-67684

:

STEPHEN MCDANIEL

:

[4.1]

MOTION TO REQUIRE THAT ALL ASPECTS
OF THE PROCEEDINGS IN THIS CASE BE
RECORDED FOR TRANSCRIPTION

STEPHEN MCDANIEL, through counsel, moves this Court to
order that all aspects of the proceedings in this case be recorded for
transcription later, if needed. "All aspects" includes:

- all pre-trial hearings;
- the selection of potential jurors for examination and oaths
given to the venire members;
- the voir dire examination, including challenges for cause, and
the striking of jurors;
- the opening statements and closing arguments of counsel;
- the examinations of the witnesses;
- all documentary evidence, including photographs;
- all oral motions (whether pre-trial, during trial or after trial)
and all hearings on oral and written motions;
- all oral objections and all hearings on oral and written
objections;
- all bench conferences;
- all oral stipulations of counsel;
- the charges of the court to the jury;
- the publication of the verdict, the polling of the jury, and
the pronouncement of sentence;

- all oral comments, instructions, directions, admonitions, rulings, and orders of the court in the case from the first proceeding through conclusion of the trial.
- all contacts between the jury and any other court personnel; and
- any and all questions or written statements made by jurors.


The absence of a complete recording and transcription of all aspects of the case "effectively deprives the defendant of his right to appeal" because inherent in the right of a convicted person to an appeal is "the right to a transcript on appeal" *Montford v. State*, 164 Ga.App. 627, 629, 298 S.E.2d 319, 320 (1982). *See Wilson v. State*, 246 Ga. 672, 675, 273 S.E.2d 9, 12 (1980) (noting that "in view of [the Georgia Supreme Court's] responsibility of the appellate review of cases in which the death penalty was imposed, an accurate and complete transcript is essential"). In cases where a transcript is incomplete or absent altogether, a defendant's counsel will not be able to review effectively the trial proceedings for possible errors. This is particularly true when a defendant has different or separate counsel at the appellate level than at the trial level.

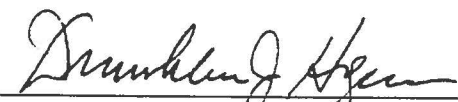
See United States v. Selva, 559 F.2d 1303 (5th Cir. 1977) (holding that although defendant urged no specific trial error he was entitled to a new trial because his new counsel was foreclosed from examining a transcript

for possible error since there was an unrecorded portion). Convictions in Georgia and elsewhere have been reversed because of a lack of complete or adequate recording and transcription. *See Parrott v. State*, 134 Ga.App. 160, 214 S.E.2d 3 (1975); *People v. Apalatequi*, 82 Cal.App. 3d 970 (1978); *State v. Moore*, 534 P.2d 1124 (N.M. 1975); *State v. Robinson*, 387 So. 2d 1143 (La. 1980); *State v. Ford*, 338 So. 2d 107 (La. 1976). What these cases recognize is that the right to a record for appeal flows out of the defendant's fundamental federal and state constitutional rights to due process.

Thus, the Court should insure that all proceedings are recorded for later transcription and use on appeal, if such becomes necessary.

December 14, 2012.


FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805


FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

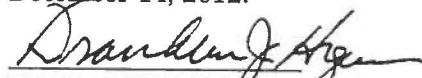
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DIANNE BRANNEN, CLERK
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BIBB COUNTY GEORGIA

STATE OF GEORGIA

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v.

:

INDICTMENT: 11-CR-67684

:

STEPHEN MCDANIEL

:

[4.2]

MOTION TO PROHIBIT THE STATE
FROM ELICITING TESTIMONY THAT
STEPHEN MCDANIEL WAS A "MINOR CONTRIBUTOR"
TO THE DNA DISCOVERED ON A HACKSAW

STEPHEN MCDANIEL, through counsel, requests that this Court prohibit the State from eliciting testimony at trial that Stephen McDaniel's DNA was discovered on a hacksaw in a laundry room closet at the apartment complex where he and Lauren Giddings lived, since there is a 7 in 10 chance that the DNA belongs to somebody else.

Granting this motion will help secure Mr. McDaniel's rights guaranteed by the Fifth, Eighth, and Fourteenth Amendments to the U.S.

Constitution, Article I, Section I, Paragraphs I, XI, XVI, and XVII of the Constitution of the State of Georgia, and will avoid the unfair prejudice that far outweighs any probative value of such tenuous evidence. In support of this motion, the defendant offers the following.

Factual Background

Just after midnight on June 30, 2011, friends reported that Lauren Giddings was missing. (19)¹ Police discovered her torso around 9:40 that morning, wrapped in black plastic bags in the bottom of a trashcan beside the apartments at 1058 Georgia Avenue. (118) The investigation continued for weeks, but on day three, July 2, 2011, at about 7:00 p.m., Macon Police Department Lt. Randy Gonzalez, along with Sgt. Bobby Newberry and Assistant District Attorney Gary Wood, entered the apartment complex laundry room. (283) They then entered a maintenance room inside the laundry room. There, they saw a hacksaw hanging on the wall, photographed it, then Sgt. Newberry took it off the wall to collect it as potential evidence. While locking the door behind them, Gary Wood picked up the hacksaw with his bare hand. (283)

Macon police sent the hacksaw, along with a couple hundred other items, to the FBI crime lab to be analyzed. They also sent known DNA of Lauren Giddings, Stephen McDaniel, and Gary Wood. Shane Hoffman of the FBI Nuclear DNA Unit in Quantico, Virginia, reported that the

¹ While little use to the Court, or to the State, parentheticals containing numbers, such as here, refer defense counsel to the page number in the discovery as it was received by the State, unnumbered, but after which the defense Bates-stamped it for quick and easy reference.

hacksaw contained the DNA of three or more people. (409) Lauren Giddings was the "major contributor," which means that the probability that the DNA taken from the hacksaw matches the DNA of another person other than Lauren is "equal to, or less than, 1 in 6 trillion individuals." (413, n. 12) Another way of describing this probability of inclusion is to imagine a line of 6 trillion people (more than exist on the planet), which line includes Lauren Giddings: The only match between the DNA taken from the hacksaw and the DNA of each of those 6 trillion people would be Lauren's. Thus, Mr. Hoffman is able to state that "to a reasonable degree of scientific certainty," the hacksaw contained Lauren's DNA. (409)

Things are very different, however, when it comes to saying whether Stephen McDaniel's DNA is also on the hacksaw. Mr. Hoffman concluded that Stephen "cannot be excluded as a potential minor contributor" to the DNA mixture. (409) The probability of his inclusion as a "minor contributor" is estimated by calculating how many others, in addition to Stephen, also "cannot be excluded" as possible contributors to the DNA taken from the hacksaw. The calculations Mr. Hoffman

made are divided among the four dominant racial types in the United States. They break down as follows:

- 71% of Caucasians
- 68% of Southeastern Hispanics
- 63% of Southwestern Hispanics
- 51% of African Americans

Another way of stating the probability, therefore, that Stephen's DNA is present on the hacksaw, rather than someone else's, is to imagine lining up 100 million Caucasians, to include Stephen in this lineup, then comparing the DNA of each one of them to the DNA on the hacksaw, and concluding that 71 million of them could have been a contributor to the DNA on the hacksaw. Or, to make the image more local, out of the approximately 69,000 Caucasians that live in Bibb County, 49,000 of them could have been a contributor to the DNA found on the hacksaw. Or, finally, imagine a jury selected for this case that is composed of 12 Caucasians: 9 of them "cannot be excluded" as possible contributors to the DNA on the hacksaw. It's no surprise, therefore, that Mr. Hoffman nowhere attaches the phrase "to a reasonable degree of scientific

certainty" to any conclusion that Stephen McDaniel's DNA is on that hacksaw.

Argument

"[T]he term 'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." O.C.G.A. § 24-4-401 (effective January 1, 2013). "Evidence which is not relevant shall not be admissible." O.C.G.A. § 24-4-402. "Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury" O.C.G.A. § 24-4-403.

This motion requests that this Court prohibit altogether the evidence related to Stephen McDaniel's DNA in connection with the hacksaw because its admission would violate the balancing test contained in § 24-4-403. The "fact that is of consequence to the determination" of the case is whether or not Stephen's DNA is on the hacksaw. This fact, if it could be established as a "fact" at all, is itself an intermediate fact, requiring other evidence from which it could then be reasonably inferred that Stephen used the hacksaw to kill or dismember

Lauren Giddings, rather than other possibilities (assuming that it is Stephen's DNA), which include such things as that Stephen's DNA got transferred to the hacksaw by some medium other than Stephen himself or that Stephen's DNA got transferred to the hacksaw by Stephen, but during some benign use of the hacksaw.

The standard under § 24-4-401 to determine whether this is relevant evidence in the first place is whether the inculcating inference the State would seek from the DNA evidence—namely, that Stephen used it to kill or dismember Lauren—is “more probable than it would be without the evidence.” The standard of relevance is a liberal one; any tendency to establish a fact of consequence is sufficient to make the evidence relevant. *Burns v. State*, 166 Ga.App. 766, 770, 305 S.E.2d 398 (1983). The defense concedes, therefore, that evidence, however slight, that Stephen's DNA may be on the hacksaw falls within the meaning of “relevant evidence,” according to § 24-4-401.

Thus, we focus the Court on the balancing test contained in § 24-4-403 and assert that, while slightly relevant, “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury” O.C.G.A. § 24-4-403. The

existence of DNA in a criminal case, either to incriminate or to exonerate, now occupies a stature in the public's mind and, consequently, in a courtroom among jurors, that makes it virtually conclusive to an issue when it arises. No other evidence, even a confession, is more persuasive when considering guilt or innocence.

But as difficult as it is for the average juror to understand the complexities of the composition of deoxyribonucleic acid² and its forensic analysis,³ mathematical probability theory then comes into play, ostensibly to assist the fact-finder to reach conclusions about whether an unknown sample of DNA can be matched to a known sample from a specific person. In reality, however, we know that most jurors, just as most others, upon hearing a forensic DNA analyst utter words like "cannot exclude the defendant" from a hacksaw – in this case, a hacksaw that indisputably contains Lauren Giddings's DNA – will cut through all the fog of deoxyribonucleic acid talk to conclude: "That must be the hacksaw Stephen McDaniel used to dismember Lauren Giddings."

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² That is, the sequences of four nucleotides composing the double-stranded helix of this information-bearing molecule, which carries within it the genetic instructions for all living organisms.

³ That is, the amplification of fragments of the molecule to isolate short tandem repeating sequences of alleles at various locations on the strand in order to compose a profile.

While a conclusion with probabilities like the one attached to Lauren Giddings's DNA matching the DNA on the hacksaw — 1 in 6 trillion chance that the DNA belongs to somebody other than Lauren — if made about Stephen, would render a motion like this not worth the paper it's printed on, nothing could be further from the case. Here, instead, we have probability calculations that "cannot exclude" 71% of all others in the United States of Stephen's race. If the evidence concerned just about anything other than DNA, with its mesmerizing effect on jurors, then all the well-established law that holds that "[e]vidence of doubtful relevancy or competency should be admitted and its weight left to the jurors" should sway the Court to admit the evidence and leave it to the defense to cross-examine the State's witnesses regarding it. *Buckler v. DeKalb County Bd. of Tax Assessors*, 262 Ga.App. 305, 587 S.E.2d 797 (2003). But in this area of evidence, and with the tenuous connection between hacksaw DNA and Stephen's DNA, the balance should tip toward the defendant and the Court should exclude it.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



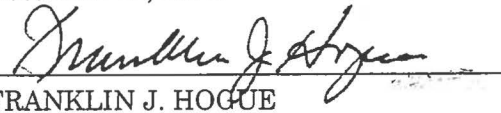
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Macon, GA 31201

December 14, 2012.


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FILED
CLERK'S OFFICE
IN THE SUPERIOR COURT OF BIBB COUNTY

STATE OF GEORGIA 2012 DEC 14 AM 10:56

STATE OF GEORGIA

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v.

DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA
INDICTMENT: 11-CR-67684

STEPHEN MCDANIEL

[4.3]
MOTION TO EXCLUDE
EVIDENCE THAT STEPHEN MCDANIEL
ALLEGEDLY DESCRIBED THE "PERFECT MURDER"
TO THADDEUS MONEY

STEPHEN MCDANIEL, through counsel, requests that this Court exclude any evidence that he described the "perfect murder" to Thaddeus Money. Excluding this tenuous and substantially prejudicial evidence will secure Stephen's rights as guaranteed by the Fifth, Sixth, and Eighth Amendments to the U.S. Constitution, Article I, Section I, Paragraphs I, XI, XVI, and XVII of the Constitution of the State of Georgia, as well as statutory rights to a fair trial. In support of this motion, the defendant offers the following:

Factual Background

One of Stephen's roommates in college at Mercer University was a person named Thaddeus Money. On July 26, 2011, Detective David

Patterson interviewed Money by telephone. (956) Patterson asked Money during that interview whether Stephen had ever mentioned anything about "committing the perfect crime." (958) Money described times during college in 2007 when Stephen would ask Money and his friends how they would defend themselves in the event of a zombie invasion and how they would plan and carry out the perfect murder. In response, all of these college guys would, as Money put it, "come up with our own little inter brained ideas." (958)

Without describing his own answer or those of the others, Money then told Patterson that Stephen said he would wear shoes that were too small, that he would make himself appear to be bald, that he would cut up the body, put the parts in bags, use chemicals to mask the odor, and spread the body parts in the woods. (959) When Money responded to Stephen's answer by saying that Stephen could never subdue him to carry out such a plan because of Money's military training, Stephen retorted that he would "bum rush" him with chloroform. Money concluded his description of these college ramblings by saying: "Yeah I

mean nobody believes you know everybody in college is full of it uh it's always 100% hypothetical." (959)¹

Argument

According to *Hodges v. State*, 265 Ga. 870 (1995), evidence that a defendant had told another person how he would commit a murder is admissible only if the murder in the case at hand was committed in the same manner. Evidence of those statements has been held to be evidence of "course of conduct" or "bent of mind." *Id.* at 873, *Kelly v. State*, 270 Ga. 523, 526, 511 S.E.2d 169, 173 (1999).

1. "Course of conduct" and "bent of mind" are no longer considered legitimate exceptions to the general ban on character evidence under Georgia Rules of Evidence.

O.C.G.A § 24-4-404 effective January 1, 2013 adopts the language of Federal Rule of Evidence 409(b) limiting the admission of character evidence relevant to the necessary proof of "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or

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¹ If necessary, at a hearing on this motion or at trial if this motion is denied, the defense will contest the accuracy and meaning of these casual college ramblings by calling into question Mr. Money's credibility.

accident.”² The exceptions “bent of mind” and “course of conduct” were traditionally, not statutorily, held to be an exception to introduce character evidence. *See Wade v. State*, 295 Ga. App. 45, 47 (2008). Neither of these terms makes an appearance in the new statutory language, suggesting negative treatment by the legislature of these terms. *See id.* at 48-49 (“Only the Supreme Court of Georgia or the Georgia General Assembly has the authority to depart from this state's established (and unique) rule on the admissibility of similar transaction evidence.”).

“Bent of mind” and “course of conduct” have been criticized in this state for being “amorphous catch-phrases, difficult to define and slippery in application.” *Farely v. State*, 458 S.E.2d 643, 650 (1995) (Justice Sears’ concurrence). The use of those phrases “obscures the distinction between legitimate evidence and the prohibited evidence of character.” *Payne v. State*, 674 S.E.2d 298 (2009) (Hunstein, J., dissent).

2. Evidence of Mr. McDaniel’s prior statements about the “perfect murder” is inadmissible as evidence of Mr. McDaniel’s bad character without any other relevant purpose.

² “The general character of the parties and especially their conduct in other transactions are irrelevant matter unless the nature of the action involves such character and renders necessary or proper the investigation of such conduct.” O.C.G.A. § 24-2-2 (effective until January 1, 2013).

It is fundamental to our system of criminal justice that evidence of the criminally accused's general character is irrelevant and inadmissible at trial. *See* O.C.G.A. § 24-4-404. Character evidence is excluded because the jury must determine the criminally accused's fate based solely upon evidence relevant to the crimes charged, and not based on the belief that the accused has a criminal character or is a person who has a general propensity to commit bad acts. *See Farley v. State*, 265 Ga. 622, 628, 458 S.E.2d 643 (1955) (Sears, J., concurring).

Bad character evidence in the form of a "perfect murder" conversation is highly inflammatory. *See Lindsey v. State*, 282 Ga. 447, 651 S.E.2d 66 (2007); O.C.G.A. § 24-4-404. The statements were made approximately five years prior to the alleged murder in this case to Mr. McDaniel's friends. These conversations were the casual conversations of young college students based on curious musings, not deep criminal confessions. Taking these conversations seriously as Mr. McDaniel's "bent of mind," "course of conduct," or "plan" are taking these conversations well out of the context of a dorm room or social gathering only for the purpose of introducing highly, and overly, inflammatory evidence of Mr. McDaniel's bad character to the jury.

Nothing about the alleged statements Defendant made about the "perfect murder" have a legal, proper link to the case at hand.

Defendant's supposed statements about the "perfect murder" must be excluded from evidence at trial because it is not relevant to any issue in the case and would be used solely to inflame the passions of the jury. *See Id.* and O.C.G.A. § 24-4-404.

3. Mr. McDaniel's statements about the "perfect murder" are unrelated to the facts of the murder in this case.

Conversations about the "perfect murder" not involving facts in the case at hand are irrelevant and highly prejudicial, thus introducing such statements does nothing more than to put Mr. McDaniel's character into evidence and should be inadmissible. *See Maxwell v. State*, 262 Ga. 73, 76, 414 S.E.2d 470, 473 (1992) (Two conversations about how defendant would commit murder inadmissible when neither conversation discussed the victim of the case and murder did not occur in the manner discussed). The conversations between Mr. McDaniel and his college roommate do not relate to the victim or how the murder was committed in this case and are therefore inadmissible.

The only similarity between the alleged conversation Mr. McDaniel had with his college roommate was that the victim was dismembered. No evidence exists that chloroform was ever used since none was found in or near the victim's or Mr. McDaniel's apartment and no evidence exists to show that the victim was dismembered in a bathroom. Furthermore, all other facts in this case differ from Mr. McDaniel's alleged "perfect murder." For example, the body was not found in the woods, nor did chemicals conceal the smell of decomposition and the murder does not have the appearance of a lover's feud. The one fact that the victim was dismembered does not establish Mr. McDaniel's alleged course of conduct, plan, or scheme. *Hodges*, 265 Ga. at 874 (Statement made by defendant admissible when murder was committed in the same way as described in the conversation).

The alleged "perfect murder" conversation happened five years before the murder of the victim and over a year before Mr. McDaniel and the victim even attended law school together. Furthermore, Mr. McDaniel has never been accused of threatening the victim or any other person. See *Kelly v. State*, 270 Ga. at 526 (Defendant's threats to kill paramour, estranged wife, co-defendant and his family, and various

strangers admissible to prove motive, state of mind, and intent to victim).

The alleged conversations about the "perfect murder" made well before Mr. McDaniel went to school with the victim and the numerous dissimilarities between the facts of that conversation and the murder in this case mean the conversation is entirely irrelevant and highly prejudicial.

4. The Eighth Amendment heightened reliability standard for capital cases requires the "perfect murder" conversation inadmissible.

Additionally, the Eighth Amendment requires a "heightened need for reliability" during all phases of capital cases. *See Zant v. Stephens*, 462 U.S. 862, 884 (1983). The Supreme Court has acknowledged that death is a punishment different from all other sanctions in kind rather than degree. *See Furman v. Georgia*, 408 U.S. 238, 288-91, 92 S. Ct. 2726, 2750-53 (Brennan, J., concurring.), *Id.* at 306, 92 S. Ct. at 2760 (Stewart, J., concurring), *Woodson v. North Carolina*, 428 U.S. 280, 303-4, 96 S. Ct. 2978, 2991. The Court stated on numerous occasions that there is a significant constitutional difference between the death penalty and lesser punishment which places "special constraints on the procedures used to

convict an accused of a capital offense and sentence him to death." See *Murray v. Giarrantano*, 492 U.S. 1, 8-9 (1989) (emphasis added); see also *Payne v. Tennessee*, 501 U.S. 808, 824, 111 S. Ct. 2596, 2607-8 (1991), *Beck v. Alabama*, 447 U.S. 625, 100 S. Ct. 2382 (1980). "Death is a different kind of punishment from any other which may be imposed in this country From the point of view of society, the action of the sovereign in taking the life of one of its citizens also differs from any other legitimate state action. It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion." *Beck v. Alabama*, 447 U.S. at 637-38.

To insure the death penalty is indeed imposed on the basis of "reason rather than caprice or emotion," the Supreme Court has invalidated procedural rules that tended to diminish the reliability of the sentencing determination. *Id.* at 638, (citing *Gardner v. Florida*, 430 U.S. 349, 97 S. Ct. 1197). The Court in *Beck* held that the same reasoning must apply to rules that diminish the reliability of *guilt determination*. *Id.* This reasoning has been applied by the court in sentencing by requiring that a defendant in a capital case to be allowed to present mitigating aspects of

the defendant's character and record to circumstances of the offense proffered in mitigation. *Lockett v. Ohio*, 438 U.S. 586, 605, 98 S. Ct. 2954, 2965 (1978).

In this case, the admission of Mr. McDaniel's "perfect murder" statements would only serve to enhance the risk that the guilt or sentencing determination in this capital case would be imposed on the basis of "caprice or emotion" rather than reason. *Beck*, 447 U.S. at 638. Due to the "heightened need for reliability" the court has a duty to more closely scrutinize the "perfect murder" statement in determining its admissibility at trial than it might in a non-capital trial case.

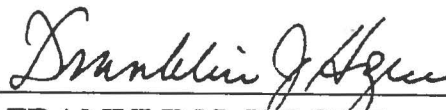
Conclusion

WHEREFORE, Stephen McDaniel asks this Court that his motion be granted and the statements about the "perfect murder" be excluded. As a less favorable alternative, Stephen McDaniel asks that this court hold an evidentiary hearing at which this evidence can be presented prior to trial in the context in which the prosecution intends to offer it so that this Honorable Court can make a pre-trial determination regarding the admission of the statements.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



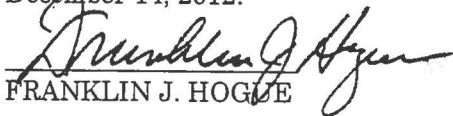
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
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v.

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INDICTMENT: 11-CR-67684

STEPHEN MCDANIEL

:

[4.4]

MOTION TO ADJOURN AROUND 4:30 P.M.
MONDAY THROUGH THURSDAY
AND TO SUSPEND COURT ON FRIDAYS

STEPHEN MCDANIEL, through counsel, requests that this Court adjourn the proceedings, both jury selection and trial, around 4:30 p.m. Monday through Thursday and to suspend court on Fridays. In support of this motion, the defendant offers the following.

The Court has discretion to set the schedule for trial days, including jury selection and presentation of evidence. The District Attorney has served notice of his intent to attempt to persuade a jury to say that Stephen McDaniel is guilty of malice murder and that he should die by lethal injection. The defense seeks to save Stephen's life.

Jury selection will require long days in court, as will the trial of the case. As any trial lawyer knows, no matter how prepared for trial one can be, there is always more work to be done, sometimes dealing with

unanticipated matters that arise during trial, often fine-tuning preparations for the next day's witnesses, all of which often requires working each evening and on weekends during trial. Counsel anticipates three to four weeks in jury selection, then another two to three weeks in trial.

A death penalty case differs in quality and kind from every other criminal case. While defense counsel assumes that prosecuting attorneys experience their own anxiety when seeking to have another human being killed, the weight of a person's possible execution increases many times for those who have accepted responsibility for preventing that death. Every move in preparation for trial and trial itself requires that the attorneys stay focused and at their best. Long days in court followed by evenings filled with work, days and weeks at a time, will wear down even the most seasoned of lawyers.

"The fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special 'need for reliability in the determination that death is the appropriate punishment' in any capital case." *Johnson v. Mississippi*, 486 U.S. 578, 584 (1988) (quoting *Gardner v. Florida*, 430 U.S. 349 (1977))

(White, J., concurring) (quoting *Woodson v. North Carolina*, 428 U.S. 280 (1976))). It is now well established that when a defendant's life is at stake, a court must be "particularly sensitive to insure that every safeguard is observed." *Gregg v. Georgia*, 428 U.S. 153, 187 (1976).

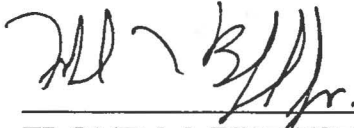
The penalty of death is qualitatively and profoundly different from any other sentence. *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) "In capital proceedings generally, this Court has demanded that factfinding procedures aspire to a *heightened standard of reliability*. This special concern is a natural consequence of the knowledge that execution is the most irremediable and unfathomable of penalties; that death is different." (citations omitted)); *California v. Ramos*, 463 U.S. 992, 998-99 (1983) (recognizing "the qualitative difference of death from all other punishments"); *Eddings v. Oklahoma*, 455 U.S. 104, 110 (1982) ("The imposition of death by public authority is ... profoundly different from all other penalties").

An important matter for this Court to safeguard for Stephen McDaniel, therefore, is the health and acuity of his lawyers.

Adjournment at 4:30 p.m. Monday through Thursday and Fridays without court will allow counsel to stay on top of each day's proceedings

and will allow them to come to court each morning of trial fully prepared to meet the demands of the day.

December 14, 2012.



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



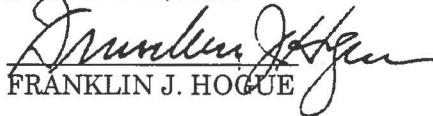
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030

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STEPHEN MCDANIEL

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DIANNE BRANNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

INDICTMENT: 11-CR-67684

[5.1]

MOTION TO DISMISS THE STATE'S NOTICE OF INTENTION TO SEEK THE DEATH PENALTY BECAUSE (1) THE NOTICE FAILS TO CONFER SUBJECT MATTER JURISDICTION TO THE SUPERIOR COURT AND (2) IT VIOLATES STEPHEN MCDANIEL'S RIGHT TO DUE PROCESS OF LAW UNDER THE GEORGIA AND U.S. CONSTITUTIONS

STEPHEN MCDANIEL moves this court to dismiss the State's Notice of Intention to Seek the Death Penalty ("Notice") because it fails to confer subject matter jurisdiction to the superior court and it violates Stephen McDaniel's right to due process under the Georgia and U.S. constitutions. In support of this motion, the defendant offers the following:

I. Procedural Posture

The Bibb County grand jury returned a true bill of indictment against Stephen McDaniel on November 15, 2011. In that indictment, the grand jury alleged that Stephen McDaniel committed the offense of

malice murder. On December 11, 2011, the District Attorney filed notice of his intent to seek to have Stephen killed.

In that Notice, the District Attorney asserts that this case is eligible for the enhanced punishment of death because the murder alleged in the indictment possesses specific aggravating factors. He alleges that the murder was "outrageously or wantonly vile, horrible and inhuman in that it involved depravity of mind." Mr. Winters drew up the notice, filed it, and served it on the defendant, as is the custom in Georgia death penalty practice.

The defendant now moves that the Notice be dismissed because it fails to confer subject matter jurisdiction to the Superior Court and it violates due process.

II. Citation of Authority and Argument

A. The State's Notice Fails to Confer Subject Matter Jurisdiction to the Superior Court

1. A capital crime is a crime for which the death penalty may be imposed.

"A reference to a crime as a 'capital felony' is generally used to distinguish felonies in which the death penalty is a possible punishment from those felonies in which death can never be inflicted as a

punishment.” *Miller v. State*, 281 Ga.App. 354, 356, 636 S.E.2d 60 (2006).

The only “permissible class of capital cases consists of cases of homicide.” *Bankston v. State*, 258 Ga. 188, 189, 367 S.E.2d 36, (1988), citing *Coker v. Georgia*, 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977).¹ In Georgia, the only type of homicide case for which the death penalty may be sought is murder. O.C.G.A. § 16-5-1(d).²

2. The death penalty may be imposed in murder cases only when one or more statutory aggravating factors exist.

In an effort to impose the death penalty without violating constitutional protections against arbitrary and capricious use of it, and in response to *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972), Georgia has attempted to narrow the class of cases for which death could be imposed.³ This attempt is codified in O.C.G.A. § 17-10-

1 Even though Georgia law includes death as a possible punishment for aircraft hijacking (O.C.G.A. § 16-5-44(c)); rape (O.C.G.A. § 16-6-1(b)); armed robbery (O.C.G.A. § 16-8-41(b)); and treason (O.C.G.A. § 16-11-1(b)), the U.S. Supreme Court has, in Judge Jack Goger’s opinion, cast “grave doubts on the constitutionality of imposing the death sentence in any case other than one where a life has been taken” in its holding in *Coker v. Georgia*, 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977).

Citing *Daniel’s Georgia Criminal Trial Practice*, § 26-6 at 1484 (West-Thomson 2007). In *Coker*, the Supreme Court held that the death penalty is grossly disproportionate, and as such violates the Eighth Amendment, when imposed where an adult female has been raped but did not die.

2 The death penalty may not be imposed in other forms of homicide in Georgia law: voluntary manslaughter (O.C.G.A. § 16-5-2); involuntary manslaughter (O.C.G.A. § 16-5-3); feticide (O.C.G.A. § 16-5-8); and vehicular homicide (O.C.G.A. § 40-6-393).

3 Under a separate motion, Stephen McDaniel challenges whether Georgia has

30(b), where the legislature has listed eleven statutory aggravating factors, any one or more of which must be found beyond a reasonable doubt before death may be imposed. O.C.G.A. § 17-10-30(c). Murder, as defined at O.C.G.A. § 16-5-1 and charged without notice of the State's intent to seek the death penalty, can be called, for purposes of analysis and clarity here, "murder *simpliciter*." (See *Ring v. Arizona*, 536 U.S. 584, 611, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), where Justice Scalia uses this phrase to distinguish non-death-penalty-eligible murder from death-penalty-eligible murder.) Murder *simpliciter* may be proved in Georgia by evidence beyond a reasonable doubt that the defendant caused the death of a human being intentionally and without justification (malice murder) or unintentionally but while in the commission of a felony (felony murder). Also for purposes of analysis and clarity, we may call death-penalty-eligible murder "capital murder," since the presence of one or more of the statutory aggravating factors make it eligible for capital punishment.

achieved this goal, arguing that in fact the class of murder cases for which one or more of the statutory aggravating factors may be alleged is so large that the danger of arbitrariness and caprice still looms large in application of the death penalty in Georgia. Hardly any murder case exists for which at least one statutory aggravating factor could not be alleged, which means that almost every murder case could become a death penalty case if the District Attorney was so inclined to make it so.

3. The statutory aggravating factors function as elements of the crime of murder, thereby making it a capital crime.

The United States Supreme Court has established that the Sixth Amendment to the U.S. Constitution requires that every element of an offense that could result in an enhanced punishment be pled and proved to a jury beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), “([o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt”); *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). The Georgia Supreme Court has held that statutory aggravating factors for purposes of imposing the death penalty “operate as ‘the functional equivalent of an element of a greater offense,’” and, thus, “the Sixth Amendment requires that they be found by a jury.” *Jones v. State*, 279 Ga. 854, 859, 622 S.E.2d 1(2005), citing *Ring v. Arizona*, 536 U.S. 584, 609(II), 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). Capital murder, therefore, includes the elements of murder *simpliciter* plus one or more of the statutory aggravating factors. “Capital murder” would consist of the elements of malice or felony murder, plus

one or more elements identified in the list of statutory aggravating factors in O.C.G.A. § 17-10-30(b), which, like the elements of malice or felony murder, must be proved to a jury beyond a reasonable doubt. As such, capital murder is a distinct crime, created by the combination of O.C.G.A. § 16-5-1 and O.C.G.A. §17-10-30(b).⁴

4. In Georgia law, O.C.G.A. § 17-7-70 requires that capital felonies proceed by indictment; without an indictment, the superior court does not possess subject matter jurisdiction.

In Georgia law, O.C.G.A. § 17-7-70 requires that capital felonies proceed by indictment: “(a) In all felony cases, *other than cases involving capital felonies*, in which defendants have been bound over to the superior court, are confined in jail or released on bond pending a commitment hearing, or are in jail having waived a commitment hearing, the district attorney shall have authority to prefer accusations, and such defendants shall be tried on such accusations, provided that defendants going to trial under such accusations shall, in writing, waive indictment by a grand jury.” O.C.G.A. § 17-7-70 (emphasis supplied). Indeed, without

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4 The Arizona statutes in *Ring* are similar to Georgia’s in one important respect: In order to seek the death penalty in *Ring*’s case, the State charged him with first-degree murder under Ariz. Rev. Stat. Ann. § 13-1105, which contains in the sentencing provision a reference to Ariz. Rev. Stat. Ann. § 13-703, which itself contains the statutory aggravating factors that make a first-degree murder case a death-eligible case. *Ring v. Arizona* at 591-592.

an indictment the superior court does not have subject matter jurisdiction to dispose of a capital felony and any judgment it renders is void. *Mayo v. State*, 277 Ga. 645, 646, 594 S.E.2d 333 (2004). A defendant in such a case cannot even waive indictment by a grand jury and enter a guilty plea. *Id.*

5. The statutory aggravating factors in this case were not presented to the grand jury.

In this case, the distinct crime of capital murder, clearly a “capital felony,” has been brought to this court by mere notice from the District Attorney. While some elements of the crime were presented to the grand jury, essential elements that convert murder *simpliciter* to capital murder were not presented to the grand jury. The grand jury, so we may presume from the face of the indictment it returned, did not consider the crime of capital murder at all, as that term is being used here to denote murder *simpliciter* plus one or more statutory aggravating factors. Thus, to proceed to trial on the capital murder charge, a charge created by the combination of an indictment presented to the grand jury and a notice issued without review by the grand jury, will render any judgment void.

B. The State's Notice Violates Stephen McDaniel's Right to Due Process Under the Georgia Constitution

Even though the Georgia Constitution does not require a grand jury indictment before a prosecution may commence, it does guarantee to every citizen due process of law. Ga. Const. Art. I, § I, ¶ 1.⁵ When a state, such as Georgia, creates a grand jury, then its role in the criminal justice system must comport with due process.⁶ Proceeding to trial on a "capital felony"—as that crime has been defined by law cited above—by means of an indictment that fails to allege all of the elements of a capital felony, but is supplemented by a mere notice from the District Attorney that purports to add those elements, violates Stephen McDaniel's constitutional right to due process. "All of the essential elements of the crime of which the defendant is convicted must be included in the indictment, as a conviction upon a charge not made or upon a charge not tried constitutes a denial of due process." *Reagan v. State*, 281 Ga.App.

708, 710, 637 S.E.2d 113, (2006), citing *DeFrancis v. Manning*, 246 Ga. 307,

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⁵ As argued above, however, Georgia statute requires an indictment in every capital felony case.

⁶ "When a State law provides for indictment and trial by a jury, due process of law, in our opinion, includes indictment and trial by juries selected in accordance with the established law, from a list of citizens representing a cross section of the community." *Allen v. State*, 110 Ga.App. 56, 65, 137 S.E.2d 711 (1964).

309, 271 S.E.2d 209 (1980).

Such an insufficient indictment violates due process because (1) "the accused shall be definitely informed as to the charges against him so that he may be enabled to present his defense and not be taken by surprise by the evidence offered at trial; and (2) that he may be protected against another prosecution for the same offense." *Reagan* at 710, citing *DePalma v. State*, 225 Ga. 465, 469, 169 S.E.2d 801 (1969). Leaving aside in this motion other flaws in the indictment, raised in separate motions that discuss insufficiency of notice and double jeopardy problems, the omission from this indictment of essential elements of capital murder fails to accord due process to Stephen McDaniel. That is because the grand jury has not put him on notice to defend against the charge that he committed a capital felony that was "outrageously or wantonly vile, horrible, or inhuman in that it involved depravity of mind." Likewise, he can defend himself on this indictment for murder and other non-capital offenses, but then be exposed to a subsequent prosecution for capital murder defined as murder *simpliciter* plus the elements contained in the State's Notice but that are not in this indictment, or any other elements from O.C.G.A. § 17-10-30(b) that the District Attorney may later

include in a separate Notice or even present to a new grand jury.

The indictment, as returned, fails to reveal that the grand jury considered this case as a capital case, again, as that term is being used in this motion. It would be little different than if a grand jury returned a true bill of indictment for child molestation, for example, but the District Attorney served notice to the defendant a couple of weeks later that he intended to prosecute the case as an aggravated child molestation.

The grand jury is a venerable institution, carried over from English medieval history and made uniquely American in the founding of our republic. A defining feature of the grand jury is its independence. (See *United States v. Navarro-Vargas*, 408 F.3d 1184 (9th Cir. 2004), and cases cited therein, particularly *Vasquez v. Hillery*, 474 U.S. 254, 106 S.Ct. 617, 88 L.Ed.2d 598 (1986), for a useful discussion of the history and role of the grand jury in our federal system of criminal justice.) In a way unlike even a petit jury, the grand jury represents the conscience of the community. "In the hands of the grand jury lies the power to charge a greater offense or a lesser offense; numerous counts or a single count; and perhaps most significant of all, *a capital offense or a non-capital offense*—all on the basis of the same facts." *Vasquez* at 263 (emphasis added). (See

also *Oglesby v. State*, 121 Ga. 602, 49 S.E. 706 (1905) ("When in the progress of an investigation of a case by the grand jury it develops from the testimony of a witness that an offense has been committed altogether disconnected from the case under consideration, it is entirely proper for the grand jury to cause a special presentment to be preferred for such offense, and require the witness to appear and be sworn on the consideration of the presentment thus preferred.")

While a petit jury is charged with applying the law to the facts to pronounce a verdict, and would be derelict in its duty if it were to "nullify" an indictment by acquitting even when no reasonable doubt existed (though it occasionally happens), the grand jury has no such restriction. A no-bill can be issued by a grand jury for any reason: to check what it considers to be a vindictive prosecution, even when probable cause exists; because it disagrees with the law under which the District Attorney seeks to prosecute a citizen, even when probable cause exists; or even because it finds capital punishment to be costly, barbaric, arbitrary in application, and subject to irreversible error, even if probable cause exists and even if the District Attorney wants to see it carried out, as he apparently does here. The grand jury, therefore, should have been

afforded its proper role in this case and its abrogation by the District Attorney's Notice violates Stephen McDaniel's due process.

C. The State's Notice Violates Stephen McDaniel's Right to Due Process Under the U.S. Constitution

In much the same way that the State's Notice violates Stephen McDaniel's right to due process under the Georgia Constitution, the Notice violates his right to due process under the U.S. Constitution. Even though the U.S. Constitution does not require that the states use a grand jury, and even though the Fifth Amendment grand jury clause has not been applied to the states,⁷ when a state employs a grand jury, it must comply with the minimum requirements of federal due process. "[T]he United States Supreme Court has determined that the Fifth Amendment clause requiring all prosecutions for infamous crimes be instituted by grand jury indictment is not made applicable to the states by the Fourteenth Amendment's Due Process Clause *provided substantial procedural safeguards are afforded a defendant.*" *Lamberson v. State*, 265 Ga. 764, 765, 462 S.E.2d 706 (1995), citing *Hurtado v. California*, 110 U.S. 516, 4 S.Ct. 111, 28 L.Ed. 232 (1884). Those "procedural safeguards" must exist

⁷ *Hurtado v. California*, 110 U. S. 516, 4 S. Ct. 111, 292, 28 L. Ed. 232 (1884).

whenever Georgia law allows the District Attorney to proceed by way of an accusation rather than an indictment, something that the D.A. cannot do in a capital case, as we argued above. Even then, in non-capital cases, when the D.A. proceeds by way of accusation under O.C.G.A. § 17-7-70, the procedural safeguards that afford due process to a defendant must include (1) a commitment hearing before a judge or magistrate (O.C.G.A. § 17-7-20); (2) the right to counsel (O.C.G.A. § 17-7-24); (3) the right to seek bail (O.C.G.A. § 17-7-24); (4) the right to testify in one's own behalf (O.C.G.A. § 17-7-28); and (5) the right to confront and cross-examine witnesses (O.C.G.A. § 17-7-28).

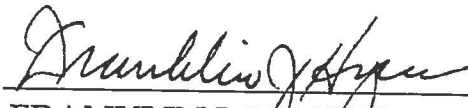
No procedural safeguards exist when the District Attorney is allowed to convert murder *simpliciter* into capital murder by mere notice and without first presenting these additional elements of the crime to the grand jury. The grand jury considered various crimes, including murder, when weighing whether probable cause existed sufficient to warrant an indictment against Stephen McDaniel. They did not consider, however, whether any additional elements existed, by probable cause or otherwise at all, sufficient to warrant an indictment against Stephen McDaniel for capital murder. No other procedural safeguard

was afforded to Stephen sufficient to guarantee that this Notice complies with the demands of federal due process applicable to the states through the Fourteenth Amendment. For this additional reason, therefore, the State's Notice must be dismissed.

December 14, 2012



FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805



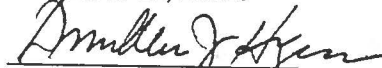
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Attorney for Defendant
State Bar Number 360030

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

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December 14, 2012.


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STATE OF GEORGIA 2012 DEC 14 AM 10:56

STATE OF GEORGIA

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DIANNE BRAHNNEN, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

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v.

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INDICTMENT: 11-CR-67684

:

STEPHEN MCDANIEL

:

[5.2]

MOTION TO DISMISS THE DISTRICT ATTORNEY'S
NOTICE OF HIS INTENT TO SEEK THE DEATH PENALTY
AGAINST STEPHEN MCDANIEL BECAUSE THE STATE'S CASE
IS ENTIRELY CIRCUMSTANTIAL AND, THUS, VIOLATES
THE HEIGHTENED PROTECTIONS OF THE CONSTITUTION
AGAINST ARBITRARY AND CAPRICIOUS IMPOSITION
OF THE DEATH PENALTY

STEPHEN MCDANIEL, through counsel, moves this Court to
dismiss the District Attorney's Notice of Intent to Seek the Death Penalty
against Stephen because the State's case turns entirely on circumstantial
evidence and, thus, violates the heightened protections of the United
States Constitution against arbitrary and capricious imposition of the
death penalty. In support of this motion, the defendant offers the
following:

Factual Background

No eyewitness will testify in this case that he or she saw Stephen McDaniel abduct Lauren Giddings from a public place, or lure or force her into his apartment, or enter her apartment by force or subterfuge when she was home alone. No eyewitness will testify that he or she saw Stephen struggle with Lauren, overcome her, kill her, dismember her, dispose of her remains, and clean up the place where all this allegedly occurred.

During 20 hours in sight of law enforcement at almost all times, spanning June 30, 2011, at around 9:00 a.m. until July 1 at 5:00 a.m., many of those hours at the Macon Police Department detective bureau or in the police truck they call a "Mobile Command Center," and at least six consecutive hours under interrogation by a variety of police officers at the detective bureau in an interrogation room, from 11:00 p.m. until 5:00 a.m., Stephen McDaniel did not confess to the murder of Lauren Giddings. At all times, he denied any involvement in or knowledge of her death and dismemberment. Thus, the trial of this case will not

include any witness to say, nor videotape or audiotape to show, Stephen McDaniel confessed to this crime.

The grand jury alleges, in an indictment drafted by the District Attorney based upon the best evidence he had at the time (and still has), that the exact day or time of the killing is unknown, that the manner in which it was carried out is unknown, and that the instrument or instruments used to accomplish it are unknown. At its most, the indictment alleges that Stephen McDaniel murdered Lauren Giddings — killed her intentionally with malice aforethought — by decapitating her somewhere in Bibb County some time during a six-day span in late June 2011. Having received and reviewed approximately 1,200 pages of discovery material and 39 CDs and DVDs of photos, taped interviews, crime lab reports, and other miscellaneous evidence, the defense can state in this motion that the “unknowns” expressed by the grand jury, under direction of then-District Attorney Gregory W. Winters, are still unknown. There is no direct evidence — evidence that points immediately to the fact at issue — that Stephen McDaniel murdered Lauren Giddings.

What the State does have is a handful of circumstances that raise enough suspicion against Stephen McDaniel to have persuaded a grand jury to indict him. Acquiring an indictment, however, is not a difficult task.¹ There are no rules of evidence, the defense is not present, hearsay is allowed, the standard of proof is "probable cause," and it takes a majority vote to indict. Nevertheless, those circumstances that the defense expects the State to attempt to introduce against Stephen at trial fail to point unequivocally to him. They may raise a suspicion against him – and the defense concedes that any case, when left to a jury to decide, can go either way – but the State's heavy burden will be to remove every single reason to doubt that Stephen McDaniel murdered Lauren Giddings, intentionally and with malice aforethought. And, the Court should note when considering this motion, that several other motions filed by the defense attack the legality of the acquisition of some of the circumstantial evidence acquired by police, named below, which severely affects its admissibility at trial. Other pieces of circumstantial

¹ As Senior United States District Judge William Campbell said of the grand jury, quoted later in *United States v. Mara*, 410 U.S. 19,23 (1973) (Douglas, J., dissenting): "This great institution has long ceased to be the guardian of the people for which purpose it was created at Runnymede. Today it is but a convenient tool for the prosecutor – too often used solely for publicity. Any experienced prosecutor will admit that he can indict anybody at any time for almost anything before any grand jury."

evidence, moreover, should not be admitted for other legal reasons raised in a variety of defense motions.

So, those incriminating circumstances include the following, at least the principal ones, as best the defense can surmise given the discovery that has been conveyed to them so far, motions to exclude some of it notwithstanding. Listing them here does not mean, of course, that the defense concedes that the State will have sufficient evidence at trial to prove their existence beyond a reasonable doubt. The list merely illustrates the kind and quality of evidence the District Attorney has apparently used as the basis for seeking to have Stephen killed some day in the future:

- Lauren Giddings's DNA was found on a hacksaw in a laundry room maintenance room at the apartment complex where she and Stephen lived.
- Stephen's DNA cannot be excluded from three or more other males' DNA also discovered on that hacksaw, even though "cannot be excluded" will turn out to mean that 71% of all other Caucasian males also cannot be excluded from having placed their DNA on that hacksaw.

- Hacksaw packaging that may have contained the hacksaw was discovered in a vanity under Stephen's bathroom sink three weeks after the investigation began.
- A pair of women's panties was found in a dresser drawer in Stephen's apartment, which panties contained Lauren's DNA and, similar to the hacksaw, Stephen's DNA "cannot be excluded."
- A master key to the apartments was found under some papers on a dresser in Stephen's apartment.
- A key to Lauren's apartment was found under some papers on a dresser in Stephen's apartment.
- Two cadaver dogs alerted in Stephen's bathroom and bedroom.
- Lauren's torso was discovered in a trashcan near Stephen's apartment.
- Stephen's torso contained what looks like two fingernail scratches.

- In a television interview, Stephen reacted in a dramatic way to news that Lauren's body may have been discovered on apartment premises.
- Stephen occasionally speculated with college friends about how to commit the perfect murder, which included dismemberment of the victim.
- Stephen lived next door to Lauren for three years.
- Finally, with respect to a motive, if the State chooses to argue one, they may add that Lauren was beautiful and had an active social life; that Stephen was a loner, had no girlfriend, and that Lauren was nice to him. Thus, he became transfixed on her, concluded that she should die, and carried out a sick and sinister plot to kill her, then went to macabre lengths to cover it up.

Without doubt, the State will have other circumstances to add to the ones above, which may be allowed into evidence at trial, but these are the principal ones culled by the defense from the voluminous discovery provided thus far in this case. If the State possesses a so-called

"smoking gun" that points exclusively and incontrovertibly to Stephen McDaniel as the killer, the defense has not seen it.

Argument

Imposing the death penalty in this case cannot satisfy the heightened reliability requirement set out by the Supreme Court of the United States, even if the State gets its conviction for murder. "The fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special 'need for reliability in the determination that death is the appropriate punishment' in any capital case." *Johnson v. Mississippi*, 486 U.S. 578, 584 (1988) (quoting *Gardner v. Florida*, 430 U.S. 349 (1977) (White, J., concurring) (quoting *Woodson v. North Carolina*, 428 U.S. 280 (1976))).

It is now well established that when a defendant's life is at stake, a court must be "particularly sensitive to insure that every safeguard is observed." *Gregg v. Georgia*, 428 U.S. 153, 187 (1976). The penalty of death is qualitatively and profoundly different from any other sentence. *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) "In capital proceedings generally, this Court has demanded that factfinding procedures aspire to a *heightened standard of reliability*. This special concern is a natural

consequence of the knowledge that execution is the most irremediable and unfathomable of penalties; that death is different." (citations omitted)); *California v. Ramos*, 463 U.S. 992, 998-99 (1983) (recognizing "the qualitative difference of death from all other punishments"); *Eddings v. Oklahoma*, 455 U.S. 104, 110 (1982) ("The imposition of death by public authority is ... profoundly different from all other penalties").

For this reason, our system of justice must go "to extraordinary measures to ensure that the prisoner sentenced to be executed is afforded process that will guarantee, as much as is humanly possible, that the sentence was not imposed out of whim, passion, prejudice, or *mistake*." *Eddings v. Oklahoma*, 455 U.S. at 118. (O'Connor, J. concurring) (emphasis added). These "extraordinary measures" must be taken at both stages of any capital trial. *Beck v. Alabama*, 447 U.S. 625, 638 (1980).

Stephen McDaniel requests, therefore, that this Court strike the District Attorney's Notice of Intent to Seek the Death Penalty as unconstitutional, on the grounds that in this case there is no way to apply it which does not violate the constitutional prohibition against the use of cruel and unusual punishment in violation of Article I, Section I, Paragraph XVII of the Constitution of the State of Georgia, and the

Eighth and Fourteenth Amendments to the Constitution of the United States.


It is impossible for a murder case resting purely on circumstantial evidence to meet the heightened reliability requirement for capital punishment set forth by the Supreme Court of the United States. We should demand that our District Attorney reserve his decision to seek the ultimate punishment only in that class of cases for which guilt is clear and statutory aggravating factors are just as clear. Otherwise, he has failed to make that discrimination between murder cases for which the death penalty may be appropriate and those not.

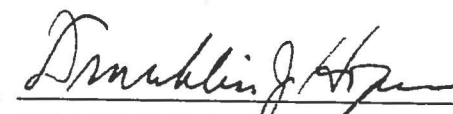
The risk of a wrongful conviction in a case that is based solely on circumstantial evidence is too high to allow the Notice to stand. See Hugo Adam Bedau & Michael L. Radelet, *Miscarriages of Justice in Potentially Capital Cases*, 40 Stan. L. Rev. 21, 61-62 (1987) (The first systematic data on the prevalence and characteristics of wrongful convictions in capital, or potentially capital, cases revealed that approximately thirty cases consisting of extremely strong circumstantial evidence resulted in erroneous convictions). Circumstantial evidence

alone leaves too many variables and facts unknown; thus, this society cannot allow a man to be put to death in such a case.

Allowing the State to continue with this prosecution as a death penalty case, based solely as it is on circumstantial evidence that does not point unequivocally to Stephen McDaniel's guilt, will violate constitutional concerns for a non-arbitrary, rationally-chosen, proportionate response to the crime alleged in this case.

December 14, 2012.


FLOYD M. BUFORD, JR.
Attorney for Defendant
State Bar Number 093805

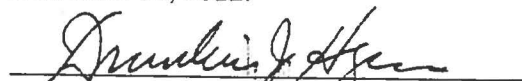

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CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion upon the office of the District Attorney for the Macon Judicial Circuit by delivering it to:

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December 14, 2012.


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IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

FILED
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2012 DEC 14 AM 10:56
DIANNE BRANNEY, CLERK
SUPERIOR COURT OF
BIBB COUNTY GEORGIA

STATE OF GEORGIA

v.

STEPHEN MCDANIEL

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INDICTMENT: 11-CR-67684

[6.1]

MOTION TO ELIMINATE THE "ALL DOUBT" AND
"MATHEMATICAL CERTAINTY" SENTENCE FROM
THE JURY CHARGE ON REASONABLE DOUBT

STEPHEN MCDANIEL, through counsel, moves this court eliminate the "all doubt" and "mathematical certainty" sentence from the jury charge on reasonable doubt prescribed by the Council of Superior Court Judges in the Criminal Pattern Jury Charges. In support of this motion, the defendant offers the following:

Introduction

The Georgia Suggested Pattern Jury Instructions, Volume II: Criminal Cases (2008), contains a suggested charge regarding reasonable doubt, to be used in a preliminary charge (0.01.00) or in the final charge (1.20.10). It reads as follows, in pertinent part (with the part to be challenged in this motion printed in bold italics):

This defendant is presumed to be innocent until he/she is proven guilty. The defendant enters upon the trial of the case with a presumption of innocence in his/her favor, and this presumption remains with the defendant until it is overcome by the State with evidence that is sufficient to convince you beyond a reasonable doubt that the defendant is guilty of the crime or crimes charged.

No person shall be convicted of any crime unless and until each element of the crime is proven beyond a reasonable doubt. The burden of proof rests upon the State to prove every material allegation of the indictment and every essential element of the crime(s) charged beyond a reasonable doubt. *However, the State is not required to prove the guilt of the accused beyond all doubt or to a mathematical certainty.*

A reasonable doubt means just what it says. It is a doubt of a fair-minded, impartial juror honestly seeking the truth. It is a doubt based upon common sense and reason. It does not mean a vague or arbitrary doubt, but it is a doubt for which a reason can be given arising from a consideration of the evidence or lack of evidence, a conflict in the evidence, or any combination of these. There is no burden of proof upon the defendant whatsoever, and the burden never shifts to the defendant to prove his innocence.

If, after giving consideration to all of the facts and circumstances of this case, your minds are wavering, unsettled, or unsatisfied, then that is a doubt of the law, and you should acquit the defendant. But if no doubt exists in your minds about the guilt of the accused, then you will be authorized to convict the defendant. If the State fails to prove the defendant's guilt beyond a reasonable doubt, it would be your duty to acquit the defendant.

The focus of this motion concerns the sentence "However, the State is not required to prove the guilt of the accused beyond all doubt or to a

mathematical certainty." This sentence suffers from two serious flaws: First, it contains an ambiguity created by its syntax,¹ rather than by an equivocal term. The fallacy of ambiguity it creates is known as "amphiboly."² This ambiguity diminishes the State's burden of proof and, therefore, should not be conveyed to the jury. Second, in addition to the ambiguity, the sentence also trades on a notion of "mathematical certainty" that misleads the jury and also diminishes the State's burden of proof. In what follows, the defendant addresses both flaws.

I. Ambiguity in the Charge Diminishes the State's Burden of Proof

After establishing that the burden of proof rests upon the State to prove every material allegation and each element of each crime charged beyond a reasonable doubt, but before attempting to define reasonable doubt, the charge begins the sentence under attack with the word "however." "However" is a conjunctive adverb, which means it joins two phrases or clauses and, in this instance, modifies them by drawing a contrast between them. What two clauses does the term "however" join

¹ "Syntax" involves the way in which linguistic elements (such as words) are put together to form constituents (such as phrases or clauses).

² There are many good examples of amphiboly, but one of my favorites: "One morning I shot an elephant in my pajamas. How he got into my pajamas I'll never know." (Groucho Marx, in the movie *Animal Crackers*)

in order to contrast? In its use in the paragraph above, it joins and contrasts the previous description of the State's burden to prove its case "beyond a reasonable doubt" with the limitation expressed in the sentence that begins with the contrastive "however," namely the limitation that the State's burden does not extend to "all doubt." The sentence beginning with "however," therefore, first sets out the State's burden—beyond a reasonable doubt—then limits it by saying, in effect, but not beyond all doubt.

The sentence under scrutiny here creates the ambiguity of amphiboly because the only doubt under discussion to this point in the charge is "reasonable doubt." Thus, the phrase "all doubt" intimates by its placement after "however" that it means "all reasonable doubt," the only doubt that's been mentioned so far in the charge. The contrast that appears to be drawn, therefore, is that while the State's burden is to prove its case "beyond a reasonable doubt," its burden does not extend to proof beyond "all reasonable doubt." The later mention of "vague or arbitrary doubt" does nothing to modify the phrase "all doubt" in the earlier paragraph. "Vague or arbitrary doubt" contrasts with "reasonable doubt," not the phrase "all doubt."

Thus, this ambiguous phrase diminishes the State's burden of proof, since its burden is precisely that it must prove its case beyond each and every — "all" — reasonable doubt. No juror should be left with the incorrect notion that he or she may still convict the defendant even if he or she possesses a reasonable doubt, even if only one and even if not as weighty, perhaps, as others that have been eliminated. A single reasonable doubt is sufficient to require that the jury acquit the defendant.

II. The Notion of "Mathematical Certainty" Further Diminishes the State's Burden of Proof

After joining "reasonable doubt" and "all doubt" with the conjunctive adverb "however," thereby creating a misleading amphiboly, the same sentence adds a disjunctive phrase — "or to a mathematical certainty" — in a further attempt to draw a limit to "reasonable doubt" and the State's burden of proof. The contrast here is between "reasonable doubt," on the one hand, and "mathematical certainty," on the other. "Reasonable doubt" has not yet been defined — that purports to occur in the next paragraph of the charge — but the charge now merely assumes that "mathematical certainty" is a clear

notion that every juror will immediately understand to refer to a level of certainty beyond what the State is required to prove. There are two problems with this assumption.

A. "Mathematical certainty" is not greater than any other kind of certainty.

What is a "mathematical certainty?" We are left to speculate, as are the jurors who hear this phrase, that it encompasses indubitable propositions of mathematics, such as "two plus two equals four." The reason nobody doubts this mathematical proposition is because we have all learned how to use the terms "two," "plus," "equals," and "four" properly. Yet, I am no less certain that I am sitting in my office typing these words on my computer right now (as I type these words, not as you read them) than I am that "two plus two equals four." Indeed, most of the beliefs we hold at any given time are as indubitable as any mathematical proposition. That is because both — the belief that I am typing these words right now and that two plus two equals four — are propositions that turn on our having learned the proper use of the terms within them. I know what "I" "am" "typing" "now" means and how to use these words no less than I know the terms "two," "plus," "equals,"

and "four" and how to use them. My level of certainty about both propositions is the same.

B. "Beyond a reasonable doubt" should rest upon the very kind of certainty that we have about mathematical and other indubitable propositions.

I can no more have a reasonable doubt about "two plus two equals four" than I can about the proposition that I am sitting at my computer typing these words right now. To doubt either of these propositions would require that I become a philosopher of the skeptical sort, the kind of philosopher that Rene Descartes answered in his famous "*cogito ergo sum*" ("I think, therefore, I am") in the seventeenth century, the sort of skeptic who no longer exists. Descartes thought that he could find the foundation upon which all certainty could be built by taking the skeptic's assertion that nothing could be known and pressing it to its extreme, all the way to doubting whether he himself even existed (whether, that is, that he — Descartes — was merely dreaming that he existed). Descartes's "*cogito*," therefore, represents the conclusion he reached that if he was to doubt everything that could be doubted, even his own existence, there still remained an "I" who was doing the

doubting. Thus, the very act of doubting, Descartes believed, refuted the doubt itself, since the person must exist to be doing the doubting about his very existence. This became the foundation upon which Descartes built his epistemology and, for a long time, became the foundation of modern philosophy and its efforts to provide a secure mooring for the growth of science, which was just coming into its own in Descartes's day.³

But having no reasonable doubt about a defendant's guilt should carry with it exactly the sort of certainty that we hold about mathematical propositions, and most other propositions we carry with us every day. The idea that we have no reason to doubt that "two plus two equals four" does not describe a level of certainty that is greater than that certainty we should have about a defendant's guilt based upon the evidence produced by the State at a trial. It is precisely what it should mean to have no reasonable doubt about the guilt of the accused — no less than one would doubt a mathematical proposition. To say otherwise,

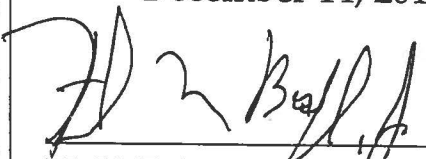
³ It need not concern us for purposes of this motion that Descartes's foundationalism in epistemology itself created all sorts of philosophical puzzles that occupied the best minds of the next several generations or that that we have seen the last 200 years of philosophy move well beyond this foundationalism toward a pragmatism that thinks of Descartes's efforts to overcome philosophical doubt as quaint yet important attacks on an epistemological skepticism that should never have bothered us in the first place. It is a fascinating tale, however, if one is into that sort of thing.

as this charge does, is to diminish, once again, the State's burden of proof.

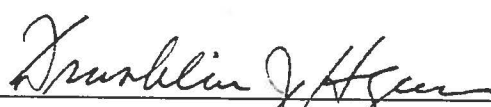
Conclusion

Thus, this misleading, ambiguous, and incorrect notion contained in the sentence "However, the State is not required to prove the guilt of the accused beyond all doubt or to a mathematical certainty" should be eliminated from the charge to the jury. Nothing need be put in its place. The charge has other problems, which the defendant will address in a separate motion,⁴ but it is sufficient to fix this problem by simply eliminating the offending sentence altogether.

December 14, 2012.



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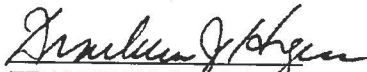
⁴ See Motion to Eliminate the Phrase "Honestly Seeking the Truth" from the Charge on Reasonable Doubt.

CERTIFICATE OF SERVICE

I certify by my signature that I have served a copy of the foregoing motion to the District Attorney for the Macon Judicial Circuit by delivering it to:

David C. Cooke
District Attorney
Macon Judicial Circuit
Grand Building, Third Floor
661 Mulberry Street
Macon, GA 31201

December 14, 2012.


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